(1) Supreme Court, U.S.
FILED

162

No 09 1411 MAY 17 2010

OFFICE OF THE CLERK

Supreme Court of the United States

DANIEL E. STOLTZFUS and SAVILLA E. STOLTZFUS

Petitioners

v.

PSR KIRKWOOD LLC , PSR LANCASTER LLC , LITTLE ELK CREEK FARM LLC

Respondents

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

RECEIVED
MAY 19 2010
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Daniel E Stoltzfus
245 Cemetery Road
Nottingham, PA 19536
(215) 239-7553

QUESTIONS PRESENTED FOR REVIEW

A Whether, where a mortgager was not served proper notice pursuant to 35 P.S.§ 1680.403c in foreclosure proceedings, deprives the trial court of jurisdiction to allow a Sheriff Sale of the property ?

B Whether a court's subject matter, or lack thereof, can be questioned for the first time on appeal?

C Whether a trial court lacked the subject matter jurisdiction to adjudicate this case, in which the mortgagers were deprived of means to determine the validity of the claim against them ?

D Whether the Petitioner's procedural due process rights were violated as a result of the lower courts' failure to provide Petitioners with procedural due-process ?

PARTIES TO THE PROCEEDINGS

William Bryan Byler -
owner of PSR KIRKWOOD LLC

SAMUEL A. GOODLEY -
owner of LITTLE ELK CREEK FARM LLC

ERIC L. WINKLE -
owner of PSR LANCASTER LLC

The above parties - individuals are also known as the named members of the law firm
BYLER , GOODLEY & WINKLE P. C.
Attorneys-at-law
363 West Roseville Pike
Lancaster , Pennsylvania 17601

DISCLOSURE STATEMENT

Petitioners, Daniel E. and Savilla E. Stoltzfus, are not a corporation.

TABLE OF CONTENTS

	Page
STATEMENT OF THE PETITION	1
STATEMENT OF THE BASIS OF JURISDICTION	6
STATEMENT OF CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED	7
STATEMENT OF REASONS FOR ALLOWENCE OF APPEAL	8
ORDER FOR REVIEW	Appendix A
PETITION FOR ALLOCATOR IN THE SUPREME COURT OF PA . . . . . Including: - ACT 91 NOTICE exhibit A - ORDERS IN QUESTION att # 1 - OPINIONS DELIVERED att # 2	Appendix B
FORM OF ACT 91 OF 1983	Appendix C
LOAN INTEREST & PROTECTION LAW Act of Jan. 30 , 1974 ,P.L.13 , No.6	Appendix D
SETTLEMENT AGREEMENT AND MUTUAL RELEASE	Appendix E
DEED of subject property	Appendix F
NOTE - REFERENCE TO OOAHP	Appendix G

TABLE OF AUTHORITIES

PAGE

Philadelphia Housing Authority v. Barbour, 592 A.2d 47, 405 Pa.Super. 140, Super. 1991, appeal granted 598 A.2d 284, 528 Pa. 631, affirmed 615 A.2d 339, Pa. 212..... 9

Bernhard v. Bernhard, 668 A.2d 546, 548 (Pa.Super. 1995)..... 10

Clay v. Advance Computer Applications, 370 Pa.Super. 497, 504, 536 A.2d 1375, 1379..... 10

In re Patterson's Estate, 341 Pa. 177, 180, 19 A.2d 165, 166 (Pa,1941)..... 10

Louisville & Nashville Railroad v. Mottley 211 U.S. 149 (1908)..... 10

Saadeh v. Farouki, 107 F. 3d 52 (D.C. Cir. 1997)..... 11

Fuentes v. Shevin, 407 U.S. 67 (1972)..... 12

Mathews v. Eldridge, 424 U.S. 319 (1976)..... 12

STATUTES

35 P.S. § 1680.402.....2...5...6...7...8

35 P.S. § 1680.403.....6....8...9

STATEMENT OF THE PETITION

The history of this case is quite in contrast with the outstanding amount of mortgage foreclosures that have occurred throughout the state of Pennsylvania recently. From the very beginning of this case, Petitioners have suffered the absence of certain provisions[1] which the Pennsylvania state laws are specifically construed to provide.

The procedural history of this case is voluminous. Under the Lancaster County docket number CI-05-07927 of which the initial mortgage foreclosure complaint arises from, there are 700 pages, followed by numerous other legal proceedings. Throughout this time petitioners have hired a number of legal representatives, all of which have ended their representation for the petitioners for various reasons.

The basis of this appeal arises out of a mortgage foreclosure complaint filed by the Respondents then client, Old Order Amish Helping Program,(OOAHP) the bank that Petitioners issued a mortgage to as security for a loan. To understand how and why Respondents are involved at this point, it is essential to know that the Respondents are each Limited

[1] There was never any consideration given at any time on behalf of Petitioners' circumstances or whether their circumstances could be relieved by provisions under the law that then in turn the validity of the claim against the Petitioners may be determined. See Provisions of law in appendix D sections 401, 403, and specifically 408.

Liability Companies owned and operated by the named members of the Law Firm of Byler , Goodly, Winkle that represented the then Mortgagee of the Petitioners, Old Order Amish Helping Program. After Sheriff Sale, Respondents purchased Petitioners' property from a third party.

It is also essential to know they Petitioners were once of the Old Order Amish religion. When they began to exercise their privileges more freely , Old Order Amish Helping Program within the Old Order Amish Church[2] started foreclosure Proceedings on Petitioners without an adequate Act 91 Notice ,35 P. S. § 1680.402c .. Act 91 governs appropriate procedure in Pennsylvania before instituting foreclosure actions. When applicable, it is essential in Pennsylvania that an adequate Act 91 Notice be sent out by certified mail, before instituting a foreclosure action.

Accordingly, the Respondents filed a complaint on behalf of their client, OOAHP against Petitioners on September 13, 2005 in Lancaster County Courthouse under docket number CI-05-07927. On the same date, Respondents filed an affidavit stating that they had sent notice under the Homeowner's Emergency Mortgage Assistance Act , also commonly known as

---

2 Old Order Amish Church governs its member's legal benefits by way of OOAHP through the note - para.3 , . . . Notwithstanding any law or usage . . .and . . .waives the benefits of all laws . .. See Note appendix G , which is in lieu with the tradition.

an "Act 91 Notice", to Petitioners by first class and certified mail on June 16, 2005.

However, Petitioners have not received this Act 91 Notice and Respondents have never been able to produce the certified mail receipt of delivery or non-delivery. Moreover, the language in the **Act 91 Notice allegedly sent to Petitioners demanded the full amount of the balance of the mortgage** instead of giving Petitioners notice of the delinquency at least 30 days before asking for the full amount of any mortgage obligation.

After various legal maneuvering[3] , a settlement agreement was entered by both parties and by court order on November 13, 2006 [4] whereby Petitioners would have an extra month to refinance the mortgage, and if they did not, a consent judgment would be entered against them by the Respondents. Accordingly, after not being able to refinance the mortgage, a consent judgment was entered against Petitioners on January 10, 2007. On June 27, 2007

[3] As an alternative, Petitioners council sent written notice to Respondents law firm requesting to accept delinquent payments and continued payments as per the note. In writing this request was denied by way of the mortgagee's only acceptance would be complete payoff and or agreement with a stipulated judgment . In the immediate proceedings the court upheld Amish Aid counter claim defendant to deny any relief to defendant Petitioners , then followed by Settlement Agreement -Mutual Release included in appendix E

[4] The Settlement agreement Mutual Release itself cannot be established as a law to waive section 408 — Notwithstanding any law , the provisions of this act may not be waived by any oral or written agreement.(as included in Appendix D)

the Petitioners' property sold at Sheriff Sale and was immediately re-purchased by Respondent Attorneys from the third party.[5]

Shortly thereafter, the Petitioners hired a second attorney who filed a petition to set aside the sheriff's sale on August 3 , 2007. On December 6 , 2007 and December 12 , 2007 the court entered duplicate orders denying the Petitioners' petition to set aside the sheriff's sale on the grounds that Petitioners' attorney failed to comply with the court's discovery and brief deadlines. On December 19, 2007, the same attorney filed a petition to stay the proceedings and permit the Petitioners to file a brief nunc pro tunc. The same day the petition was denied. Finally, on January18, 2008 the Petitioners filed an appeal to the Superior Court of the trial court's December 19 , 2007 order. However, the appeal was subsequently quashed by the Superior Court on the ground that the appeal was untimely and not based on an appealable.

After becoming involved with the Petitioners' case and learning of all the injustices that have transpired to the Petitioners[6] by the hands of the

---

[5] According to the deed in appendix F the Respondents' purchased said property from Mr. Glick by certain agreement on November 15 2007, (see second to last paragraph. In the deed.) This comes within the time frame of the court's August 6 order.

[6] As an example thereof , Petitioners were not notified or involved with negotiations leading to said agreement in the second to last paragraph of the deed (see appendix F) by way of their attorney's request to the

Respondents and Respondents' former client , Petitioners' last attorney , has performed a variety of legal maneuvers,[7] bringing things around full circle to the original foreclosure action. Consequently, after learning there never was proper notice under Act 91 , 35P. S. § 1680.402c(a) given to the Petitioners , the Petitioners' attorney then filed a motion to set aside the sheriff's sale on March 19 , 2009.[8] Said motion was denied the same day without any consideration given thereto.[9] Consequently, Petitioners' attorney then filed an appeal in the Superior Court on April 8 , 2009.The appeal was quashed by the Superior Court on August 4 , 2009 most likely as a result of there being a previous appeal that was untimely.

The last Court Order presently being appealed is the Court Order dated February 16\ 2010, issued by the Pennsylvania Supreme Court, whereby Petitioners' Petition for allowance of appeal was denied by the Court.[10]

---

court to withdraw from representing them , even while discovery as per the court's order was left undone.

[7] The U. S. District Court accepted the settlement Agreement as Law and relief to the Petitioners was denied.

[8] As before the judge in a previous bankruptcy court Respondents were unable to present the required notice receipt or evidence thereof.

[9] Shortly thereafter, on April 21 , 2009 Petitioners were evicted without further notice .

[10] There was no opinion attached.

STATEMENT OF THE BASIS OF JURISDICTION

It is believed and therefore proffered that pursuant to this Court's Rule10, "A state court or United States court of appeals has decided an important question of federal law that has not been , but should be , settled by this court , or has decided an important federal question in a way that conflicts with relevant decisions of this court."

The last Court Order presently being appealed is the Court Order dated February 16, 2010,[11] issued by the Pennsylvania Supreme Court, whereby Petitioners' Petition for allowance of Appeal was denied by the Court. Petitioners' appeal to the Pennsylvania Supreme Court was based upon the failure of a Pennsylvania trial court to set aside a Sheriff Sale on the basis the trial court lacked subject matter jurisdiction to originally hear the case in the first place as a result of the Respondents' failure to abide by a Pennsylvania Statute, Act 91, 35 P.S. § 1680.402c, which governs appropriate procedure in Pennsylvania before instituting foreclosure actions.

It is alleged that this failure violated Petitioners" procedural due process rights. As a result it is alleged that 28 U.S.C. §2403(b) may apply and Petitioners" are therefore serving the Attorney General of the State of Pennsylvania with this initial writ.

[11] Petitioners or their council received no opinion, in writing or any other, with this order. See appendix A

STATEMENT OF CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Petitioners are alleging that the initial trial court lacked subject matter jurisdiction to originally hear the case in the first place as a result of the Respondents' failure to abide by a Pennsylvania Statute, Act 91, 35 P.S. § 1680.402c, which governs appropriate procedure in Pennsylvania before instituting foreclosure action.

Petitioners are alleging that their procedural and substantive due process rights inherent by way of the Fourteenth Amendment[12] of the United States Constitution were violated as a result of the State of Pennsylvania and Respondents' failure to appropriately enforce their own state court procedures governed through Act 91, 35 P.S. § 1680.402c, which governs appropriate procedure in Pennsylvania before instituting foreclosure actions.

[12] . . . nor shall any State deprive any person of life , liberty , or property, without due process of law;

STATEMENT OF REASONS FOR ALLOWANCE OF APPEAL

The Supreme Court of the United States of America has consistently held that a court cannot hear a case unless it has jurisdiction to do so.

In the instant case, the Respondents when acting as counsel for the original Mortgagee, failed to provide proper notice requirements to the Petitioners before instituting foreclosure proceedings against them pursuant to the notice requirements of Act 91. For instance, according to Act 91, 35 P.S. § 1680.402c(a),

> Before any mortgagee may accelerate the maturity of any mortgage obligation covered under this article, commence any legal action foreclosure to recover under such obligation, or take possession of any security of the mortgage debtor for such mortgage obligation, such mortgagee shall give the mortgagor notice as described in section 403-C.

As set forth in Act 91, 35 P.S. § 1680.403c(b)(1), this notice shall "advise the mortgagor of his delinquency or other default under the mortgage, including an itemized breakdown of the total amount past due...". Moreover, Section 1680.403c(b)(2) of the Act requires that the mortgagee give the mortgagor this notice of delinquency amount at least 30 days before asking for the full amount of any mortgage obligation or instituting any legal action.

However, in looking at paragraph A, page 3 of the Act 91 Notice allegedly sent to Petitioners by the Respondents the paragraph states that the Respondents have failed to pay four monthly payments and further states that "As a result, the remaining balance is accelerated."

However, asking for the full amount of the remaining balance of the mortgage before giving the mortgagor notice of the delinquency 30 days prior is a violation of the notice requirement of Act 91. In addition, although it was alleged in the Respondent's Affidavit that the Act 91 Notice was sent, the Petitioners did not receive said notice. Moreover, Petitioners have not seen the returned Certified Mailing of the Act 91 Notice allegedly sent to them, signed or returned unsigned, as is described in Respondents' Affidavit.

Notice requirements pertaining to foreclosure proceedings are jurisdictional and, where applicable, failure to comply therewith will deprive the court of jurisdiction to act. Philadelphia Housing Authority v. Barbour, 592 A.2d 47, 405 Pa.Super. 140, Super. 1991, appeal granted 598 A.2d 284, 528 Pa. 631, affirmed 615 A.2d 339, 532 Pa. 212. Based upon the foregoing, the Respondents and Mortgagee did not properly invoke the jurisdiction of the trial court because Respondents failed to provide Petitioners with the notice required by 35 P.S. § 1680.403c.

Pennsylvania law has consistently held that, "The action or inaction of the parties cannot bestow subject matter jurisdiction upon a court that otherwise lacks it." Bernhard v. Bernhard, 668 A.2d 546, 548 (Pa.Super. 1995); Clay v. Advanced Computer Applications, 370 Pa.Super. 497, 504, 536 A.2d 1375, 1379 (1988) (en banc), modified, 522 Pa. 86, 559 A.2d 917 (1989) (citations omitted).

Moreover, it has consistently been held that, "The want of jurisdiction over the subject-matter may be questioned at any time. It may be questioned either in the trial court, before or after judgment, or for the first time in an appellate court, and it is fatal at any stage of the proceedings, even when collaterally involved." In re Patterson's Estate341 Pa. 177, 180, 19 A.2d 165, 166 (Pa.1941)

Likewise, the same has consistently been held by this Supreme Court of the United States. In the case, Louisville & Nashville Railroad v. Mottley 211 U.S. 149 (1908), in the opinion of the Court given by Justice Moody, it concludes ..."in our opinion the court below was without jurisdiction of the cause. It further concludes, "Neither party has questioned that jurisdiction, but it is the duty of this court to see to it that the jurisdiction of the Circuit Court, which is defined and limited by statute, is not exceeded. This duty we have frequently performed of our own motion."

This Court came to a similar conclusion in the case of Saadeh v. Farouki, 107 F. 3d 52 (D.C. Cir. 1997).

In conclusion this case is an instance where the sheriff lacked the authority to sell the Petitioners' property because the trial court was without subject matter jurisdiction to give the sheriff such authority.

Petitioners' procedural and substantive due process rights were violated as a result of the State of Pennsylvania and Respondents' failure to appropriately enforce their own state court procedures governed through Act 91, 35 P.S. § 1680.402c, which governs appropriate procedure in Pennsylvania before instituting foreclosure actions.

By way of motion to the original trial court and subsequent appeals to various appellate courts, it has been made known to such courts, that provisions in Pennsylvania law, known as Act 91, designed to provide due process rights to individuals facing foreclosure, have been violated.[13] However, every one of these courts have failed to address the issue at all. Subsequently, Petitioners have been deprived of due process of law by the State of Pennsylvania as

[13] *Due Process is afforded by the kinds of NOTICE or HEARING that are aimed at establishing the validity of the claim against the debtor. (A)If the Mortgagee intends to foreclose as it is in this case, then the foreclosure must be preceded by the proper requirements thereto - as due process. (B)If the lender files a suit to collect a debt then a 30 day notice must precede any legal action - as due process. See appendix D - Section403.*

conferred by the Fourteenth Amendment of the United States.

In the case of Fuentes v. Shevin, 407 U.S. 67 (1972), the Supreme Court was called upon to question whether certain statutory procedures violated the Fourteenth Amendment's guarantee that no state deprive any person of property without due process of law. The Court stated "... For more than a century the central meaning of procedural due process has been clear . . . Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified."

In Matthews v. Eldridge, 424 U.S. 319 (1976), the Court set forth three factors that normally determine whether an individual has received the "process" that the Constitution finds "due". The Court held that "First, the private interests that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." By weighing these concerns, courts can determine whether a state has met the "fundamental requirement of due process"- "the opportunity to be heard at a meaningful time and in a meaningful manner."

By failing to enforce the Petitioners' protections granted by Act 91, the State of Pennsylvania has effectively denied Petitioners Due Process Rights inherent in the Fourteenth Amendment.

COURT'S SYMBOL

SUPREME COURT OF PENNSYLVANIA

Middle District

Irene M. Bizzoso, Esq.
Acting Prothonotary
Elisabeth E. Zisk
Chief Clerk

601 Commonwealth Avenue,
Suite 4500
Harrisburg, Pa 17106
(717) 787-618
www. pacourts.us

February 16, 2010

Alexander Geoffrey Tuttle, Esq.
2880 Bergey Rd Ste H
Hatfield, PA 19440

RE: PSR Kirkwood, LLC v. Stoltzfus, D.
No. 165 MM 2009
Lower Appellate Court Docket No: 617 MDA 2009
Trial Court Docket No: CI-08-07341

Dear Mr. Tuttle:

Enclosed please find a certified copy of an order dated February 16, 2010 entered in the above-captioned matter.

Very Truly Yours,
Office of the Prothonotary

/hms
Enclosure
cc: The Honorable Howard F. Knisely, Judge
Eric L. Winkle, Esq.

APPENDIX A

IN THE SUPREME COURT OF PENSLYVANIA
MIDDLE DISTRICT

PSP KIRKWOOD, LLC, LITTLE	:	No. 165 MM
ELK CREEK	:	2009
FARM, LLC AND PSR	:	
LANCASTER, LLC,	:	
Respondents	:	
v.	:	
DANIEL E. STOLTZFUS AND	:	
SAVILLA E. STOLTZFUS,	:	
Petitioners	:	

ORDER

PER CURIAM

AND NOW, this 16th day of February, 2010, the petition for Allowance of Appeal, treated as a Petition for Review, is **DENIED.**

TRUE & CORRECT COPY
ATTEST: February 16, 20010

"s/"
Elizabeth E. Zisk, Chief Clerk

(2) APPENDIX B & C

Supreme Court, U.S.
FILED

No.
091411 MAY 17 2010

IN THE OFFICE OF THE CLERK

Supreme Court of the United States

DANIEL E. STOLTZFUS and SAVILLA E. STOLTZFUS

Petitioners

v.

PSR KIRKWOOD LLC , PSR LANCASTER LLC , LITTLE ELK CREEK FARM LLC

Respondents

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Daniel E Stoltzfus
245 Cemetery Road
Nottingham, PA 19536
(215) 239-7553

M.D. MISC. DKT.
165 2009

IN THE SUPREME COURT OF PENNSYLVANNIA

DANIEL E. STOLTZFUS and SAVILLA E. STOLTZFUS

Appellants,

v.

PSR KIRKWOOD, LLC, PSR LANCASTER, LLC and LITTLE ELK CREEK FARM, LLC

Appellees.

Appeal from Order entered in the Superior Court under docket number 617 MDA 2009 entered on August 3, 2009

PETITION FOR ALLOCATOR

Alexander G. Tuttle, Esquire
Attorney ID# 206864
2880 Bergey Road, Suite H
Hatfield, PA 19440
(215) 522-8162
Attorney for Appellants

Recieved in Supreme Court
SEP-3 2009
Middle

APPENDIX B

TABLE OF CONTENTS

	Page
STATEMENT OF QUESTIONS INVOLVED	1
STATMENT OF CASE	2
STATMENT OF REASONS FOR ALLOWANCE OF APPEAL	5
ACT 91 NOTICE ALLEGEDLY SENT TO APPELLANTS	Ex. A
ORDERS IN QUESTION	Att. #1
OPINIONS DELIVERED	Att. #2

STATMENT OF QUESTIONS INVOLVED

Whether a Mortgagee's failure to provide proper notice pursuant to 35 P.S. §1680.403c in mortgage foreclosure proceedings deprives the trial court of jurisdiction to allow a foreclosure sale.

Whether a court's matter, or lack thereof, can be questioned for the first time after an appeal was already filed and dismissed as untimely.

STATMENT OF THE CASE

The procedural history of this case is voluminous, with most of the history occurring after the issue which is the subject of this appeal. Accordingly, only the undisputed material facts will be addressed in this Petition for Allowance of Appeal.

The basis of this appeal arises out of a mortgage foreclosure complaint filed by the Respondents on behalf of their then client, Old Order Amish Helping Program, the bank that gave Petitioners issued a mortgage to. To understand how and why the Respondents are involved at this point, it is essential to know that the Respondents are each Limited Liability Companies owned and operated by the named members of the Law Firm of Byler, Goodley and Winkle that represented the then Mortgagee of the Petitioners, Old Order Amish Helping Program, and purchased the Petitioners' property from a "third party" after the foreclosure sale.

It is also essential to know the Petitioners were once of the Amish religion and as soon as they expanded their religious horizons, the Amish Church and Old Order Amish Helping Program started foreclosure proceedings on the Petitioners with an inadequate Act 91 notice. Accordingly, the Respondents filed a complaint in mortgage foreclosure on behalf of their client against Petitioners on September 13, 2005 in the Lancaster County Courthouse under docket number CI-05007927. On that same date, Respondents filed an affidavit stating that they had sent notice under the Homeowner's Emergency Mortgage Assistance Act, also commonly known as an "Act 91 Notice", to Respondents by first class and certified mail on June 16, 2005.

However, Petitioners have not received this Act 91 Notice and Respondents have never been able to produce the certified mail receipt of delivery or non-delivery.

2

Moreover, the language in the **Act 91 Notice allegedly sent to Petitioners demanded the full amount of the balance of the mortgage** instead of giving the Petitioners notice of the delinquency at least 30 days before asking for the full amount of any mortgage obligation.

After various legal maneuvering, a settlement agreement was entered into by both sides on November 9, 2006 whereby the Petitioners would have an extra month to refinance the mortgage, and if they did not, a consent judgment would be entered against them by the Respondents. Accordingly, after not being able to refinance the mortgage, a consent judgment was entered against the Petitioners on January 10, 2007. On June 27, 2007, the Petitioners property sold at foreclosure sale and was immediately re-purchased by the Respondent Attorneys from the "third party."

Shortly thereafter, the Petitioners hired a second attorney who filed a petition to set aside the foreclosure sale on August 3, 2007. On December 6, 2007 and December 12, 2007, the court entered duplicate orders denying the Petitioners' petition to set aside the sheriff's sale on the grounds that Petitioners' attorney failed to comply with the court's discovery and brief deadlines. On December 19, 2007, Petitioners' second attorney filed a petition to stay

the proceedings and permit the petitioners to file a brief nunc pro tunc. The same day, the petition was denied. Finally, on January 18, 2008, the Petitioners filed an appeal to the Superior Court of the trial court's December 19, 2007, order. However, the appeal was subsequently quashed by the Superior Court on the ground that the appeal was untimely and not based on an appealable order.

After becoming involved with the Petitioner's case and learning of all the injustices that have transpired to the Petitioners by the hands of the Respondents and

Respondents' former client, this attorney has performed a variety of legal maneuvers bringing us full circle to the original foreclosure action.

Consequently, this attorney filed an appeal to the Superior Court on April 8, 2009. The appeal was quashed by the Superior Court on August 4, 2009 most likely as a result of there being a previous appeal that was untimely. Wherefore, this attorney files this Petition for Allocator to this Supreme Court on the basis that subject matter can be questioned at any time.

STATEMENT OF REASONS FOR ALLOWANCE OF APPEAL

The Superior Court's decision to quash this attorney's appeal of the trial court's denial of the motion to set aside the sheriff's sale because of lack of subject matter jurisdiction is not in accord with the applicable decisions of the Supreme Court of Pennsylvania.

In the instant case, the Respondents when acting as counsel for the original Mortgagee, failed to provide proper notice requirements to the Petitioners before instituting foreclosure proceedings against them pursuant to the notice requirements of Act 91. For instance, according to Act 91, 35 P.S. § 1680.402c(a),

> Before any mortgagee may accelerate the maturity of any mortgage obligation covered under this article, commence any legal action including mortgage foreclosure to recover under such obligation, or take possession of any security of the mortgage debtor for such mortgage obligation, such mortgagee shall give the mortgagor notice as described in section 403-C.

As set forth in Act 91, 35 P.S. § 1680. 403c(b)(1), this notice shall "advise the mortgagor of his delinquency or other default under the mortgage,

including an itemized breakdown of the total amount past due...". Moreover, Section 1680.403c(b)(2) of the Act requires that the mortgagee give the mortgagor this notice of delinquency amount at least 30 days before asking for the full amount of any mortgage obligation or instituting any legal action.

However, in looking at paragraph A, page 3 of Act 91 Notice allegedly sent to Petitioners by Respondents (attached hereto as "Exhibit A"), the paragraph states that

---

the Respondents have failed to pay four monthly payments and further states that "As a result, the remaining balance is accelerated."

However, asking for the full amount of the remaining balance of the mortgage before giving the mortgagor notice of the delinquency 30 days prior is a violation of the notice requirement of Act 91. In addition, although it was alleged in the Respondent's Affidavit, "Exhibit A", that the Act 91 Notice was sent, the Petitioners did not receive said notice. Moreover, Petitioners have not seen the returned Certified Mailing of the Act 91 Notice allegedly sent to them, signed or returned unsigned, as is described in Respondents' Affidavit.

Notice requirements pertaining to foreclosure proceedings are jurisdictional and, where applicable, failure to comply therewith will deprive the court of jurisdiction to act. Philadelphia Housing Authority v. Barbour, 592 A.2d 47, 405 Pa.Super. 140, Super.1991, appeal granted 598 A.2d 284, 528 Pa. 631, affirmed 615 A.2d 339, 532 Pa. 212. Based upon the foregoing, the Respondents and Mortgagee have not properly invoked the jurisdiction of the trial court because Respondents failed to provide Movants with the notice required by 35 P.S. § 1680.403c.

In Bernhard v. Bernhard,668 A.2d 546, 548 (Pa.Super. 1995), our Superior Court wrote: "The action or inaction of the parties cannot bestow subject matter jurisdiction upon a court that otherwise lacks it' Clay v. Advanced Computer Applications, 370 Pa. Super. 497, 504, 536 A2d 1375, 1379 (1988) (en banc), modified, 522 Pa. 86, 559 A2d 917 (1989) (citations omitted). Therefore, our rules of civil procedure provided that either party, or the court sua sponte, can raise the lack of jurisdiction at any time. Id. (citations omitted)."

"Jurisdiction is the capacity to pronounce judgment of the law on an issue brought before the court through due process of law. It is the rights

adjudicate concerning the subject matter in a given case.... Without such jurisdiction, there is no authority to give judgment and one so entered is without force and effect," Bernhard, 668 A.2d at 548 (citations omitted.)

Moreover, "The want of jurisdiction over the subject-matter may be questioned at any time. It may be questioned either in the trial court, before or after judgment, or for the first time in an appellate court, and it is fatal at any stage of the proceedings, even when collaterally involved." In re Patterson's Estate 341 Pa. 177, 180, 19 A.2d 165, 166 (Pa. 1941)

By way of analogy, in Wells Fargo Bank, N., v. Long, 934 A.2d 76 (Pa.Super. 2007), assignee of successful bidder at foreclosure sale brought ejectment action against mortgagor after mortgagor failed to vacate the premises. It was held that the action was premature, because the assignee did not gain the right to possession until after the lawsuit was filed when the sheriff acknowledged and recorded the Deed.

> Consequently, applying the time-honored tenets of the law associated with rights inuring to a purchaser at a sheriff's sale to the facts sub judice, we find that Appellee's complaint in ejectment was premature because its "right to possession" to the real estate did not attach until the sheriff acknowledged and recorded the deed, which occurred two months

after the commencement of the lawsuit. The hiatus between the date to the sheriff's sale on November 7, 2005, and the recording of the deed by the sheriff on January 20, 2006, created a jurisdictional void which the trial court could not traverse to entertain Appellee's complaint in ejectment filed on November 17, 2005.

934 A.2d at 81 (emphasis added)

7

In conclusion this case is an instance where the sheriff lacked the authority to sell the Movants' property because the trial court was without subject matter jurisdiction to give the sheriff such authority.

With the amount of foreclosure actions reaching record highs on a monthly basis, the issue of whether or not a foreclosure sale can be over-turned because of a lack of subject matter jurisdiction of the trial court to a hear the foreclosure action involves an issue of immediate public importance.

With foreclosures reaching an all-time high and continuing to do so on a monthly basis, this appeal presents an opportunity for the

Pennsylvania Supreme Court to examine the foreclosure notice requirements under Act 91 and to make clear the consequences for not adhering to said notice requirements.

This appeal also gives the Pennsylvania Supreme Court the ability to look at the issue of when and how long a case may be attacked on the ground of lack of subject matter jurisdiction and the consequences of such an attack.

VERIFICATION

I, Alexander G. Tuttle, Esquire, do hereby verify that the statements made in the foregoing Petition for Allocator are true and correct to the best of my knowledge, information, and belief. I further understand that the statements therein made are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

"s/"

Alexander G. Tuttle, Esquire

EXHIBIT A

Byler, Goodley, Winkle & Hetrick, P.C.

Attorneys-at-Law

363 West Roseville Road

Lancaster, Pennsylvania 17601

(Additional Offices in Elizabethtown and Intercourse)

Samuel A. Goodly, Jr.*

W. Bryan Byler

Eric I. Winkle

D. Holbrook Duer

Carolyn K. Hetrick

*LL.M in Taxation

Phone (717) 560-6330 ext 4

Fax (717) 560-6328

Email: Bduer@bgwh.com

June 16, 2005

BY FIRST CLASS AND CERTIFIED MAIL

Daniel E, Stoltzfus
834 Pumping Station Road
Kirkwood PA 17536

Savilla E, Stoltzfus
834 Pumping Station Road
Kirkwood PA 17536

RE: Notice of Intent to Foreclose under the Homeowners Emergency Mortgage Assistance Act

Dear Sir/Madam:

Enclosed please find Notice of Intent to Foreclose under the Homeowners Emergency Mortgage Assistance Act.

Sincerely,

BYLER, GOODLEY, WINKLE, & HETRICK, P.C.

"s/"

Brook Duer

DHD/ses

Enclosure

Cc: Old Order Amish Helping Program

Notice of Intent to Foreclose under the Homeowners Emergency Mortgage Assistance Act (Act 91 of 1983)

Date: June 16, 2005

ACT 91 NOTICE
TAKE ACTION TO SAVE
YOUR HOME FROM
FORECLOSURE

This is an official notice that the mortgage on your home is in default, and the lender intends to foreclose. Specific information about the nature of the default is provided in the attached pages.

The HOMEOWNER'S MORTGAGE ASSISTENCE PROGRAM (HEMAP) may be able to help to save your home. This notice explains how he program works.

To see if HEMAP can help, you must MEET WITH A CONSUMER CREDIT COUNSELING AGENCY WITHIN 30 DAYS OF THE DATE OF THIS NOTICE. Take this notice with you when you meet with the Counseling Agency.

The name, address and phone number of the Consumer Credit Counseling Agencies serving your County are listed at the end of this Notice. If you

have any questions, you may call the Pennsylvania Housing Finance Agency toll free at 1-800-342-2397. (Persons with impaired hearing can call (17 780-1869).

This Notice contains important legal information. If you have any questions, representatives at the Consumer Credit Counseling Agency may be able to help explain it. You may also want to contact an attorney in your area. The local bar association may be able to help you find a lawyer.

1

HOMEOWNER'S NAME(S): Daniel E. Stoltzfus and Savilla E. Stoltzfus

PROPERTY ADDRESS: 834 Pumping Station Road, Kirkwood PA 17536

LOAN ACCT. NO.: N/A

ORIGINAL LENDER: Old Order Amish Helping Program

CURRENT LENDER/SERVICER: Old Order Amish Helping Program

HOMEOWNER'S EMERGENCY MORTGAGE ASSISTANCEPROGRAM

YOU MAY BE ELIGIBLE FOR FINANCIAL ASSISTANCE WHICH CAN SAVE YOUR HOME

FROM FORECLOSURE AND HELP YOU MAKE FUTURE MORTGAGE PAYMENTS

IF YOU COMPLY WITH THE PROVISIONS OF THE HOMEOWNER'S EMERGENCY MORTGAGE ASSISTANCE ACT OF 1983 (THE "ACT"), YOU MAY BE ELIGIBLE FOR EMERGENCY MORTGAGE ASSISTANCE:

- IF YOUR DEFAULT HAS BEEN CAUSED BY CIRCAMSTANCES BEHOND YOUR CONTROL
- IF YOU HAVE A RESOONABLE PROSPECT OF BEING ABLE TO PAY YOUR MORTGAGE PAYMENTS, AND
- IF YOU MEET OTHER ELIGIBLE REQUIREMENTS ESTABLISHED BY THE PENNSYLVANIA HOUSEING FINANCE AGENCY.

TEMPORY STAY OF FORECLOSURE-Under the Act, you are entitled to a temporary stay of foreclosure on your mortgage for thirty (30) days from the date of this Notice. During that time you must arrange and attend a "face to face" meeting with one of the consumer credit counseling agencies listed at the end of this Notice. THIS MEETING MUST OCCUR WITHIN THE NEXT (30) DAYS. IF YOU DO NOT APPLY FOR EMERGENCY MORTGAGE ASSISTENCE, YOU MUST BRING YOUR MORTGAGE UP TO DATE. THE PART OF THIS NOTICE CALLED "HOW TO CURE YOUR MORTGAGE DEFAULT", EXPLAINES HOW TO BRING YOUR MORTGAGE UP TO DATE.

CONSUMER CREDIT COUSELING AGENCIES--If you meet with one of the consumer credit counseling agencies listed at the end of this notice, the lender may NOT take action against you for thirty (30) days

after the date of this meeting. The names, addresses and telephone numbers of designated consumer credit counseling agencies for the county in which the property is located are set forth at the end of this Notice. It is only necessary to schedule one face-to-face meeting. Advise your lender immediately of your intentions.

APPLICATION FOR MORTGAGE ASSISTANCE- your mortgage is in default for the reasons set forth later in this Notice (see following pages for specific information about the nature of your default.) If you have tried and are unable to resolve this problem with the lender, you have the right to apply for financial assistance from the Homeowner's Emergency Mortgage Assistance Program. To do so, you must fill out, sign and file a complete Homeowner's Emergency Assistance Program Application with one of the designated consumer credit counseling agencies listed at the end of this Notice. Only consumer credit counseling agencies have applications for the program and they will assist you in submitting a complete application to the Pennsylvania Housing Finance Agency. Your application MUST be filed or postmarked within thirty (30) days of your face-to-face meeting.

YOU MUST FILE YOUR APPLICATION PROMPLY. IF YOU FAIL TO DO SO OR IF YOU DO NOT FOLLOW THE OTHER TIME PERIODS SET FORTH IN THIS LETTER, FORECLOSURE

MAY PROCEED AGAINST YOUR HOME IMMEDIATELY AND YOUR APPLICATION FOR MORTGAGE ASSISTENCE WILL BE DENIED.

AGENCY ACTION-Available funds for emergency mortgage assistance are very limited. They will be disbursed by the Agency under the eligible criteria established by the Act. The Pennsylvania Housing Finance Agency has sixty (60) days to make a decision after it receives your application. During that time, no foreclosure proceedings will be pursued against you if you have met the time requirements set forth above. You will be notified directly by the Pennsylvania Housing Finance Agency of its decision on your application.

NOTE: IF YOU ARE CURRENTLUY PROTECTED BY THE FILING OF A PETITION IN BANKRUPTCY, THE FOLLOWING PART OF THIS NOTICE IS FOR INFORMATION PURPOSES ONLY AND SHOULD NOT BE CONSIDERED AS AN ATTEMPT TO COLLECT THE DEPT. (If you have filed bankruptcy you can still apply for Emergency Mortgage Assistance.)

HOW TO CURE YOUR MORTGAGE DEFAULT-Bring it up to date and take all actions required by paragraph 2 of the Mortgage.

NATURE OF THE DEFAULT-The MORTGAGE debt held by the above lender on your property located at 834 Pumping Station Road, Kirkwood PA 17536

IS SERIOUSLY IN DEFAILT because: you have not made a payment since February 15, 2005 and have failed to take all actions required under paragraph 3 of the Mortgage.

A. YOU HAVE NOT MADE MONTHLY MORTGAGE PAYMENTS for the following months and the following amounts are past due: March 2005 through June 2005, totaling $8,400. As a result, the remaining balance is accelerated and the entire amount of principle and interest of $270,890.84 as of 5/1/05 plus additional daily interest of $51.22 on the principle amount of $267,049.71 since 5/1/05.

Other charges: any outstanding taxes, liens, insurance charges or assessments paid by Old Order Amish Helping Program.

TOTAL AMOUNT PAST DUE: $270,890.84 as of 5/1/05 plus additional daily interest of $5122 on principal amount of $267,040.71 since 5/1/05.

B. YOU HAVE FAILED TO TAKE THE FOLLOWING ACTION: failed to maintain Amish Aid Coverage, failed to take all actions required under paragraph 2 (a), (b) and (c) of the Mortgage.

HOW TO CURE THE DEFAULT: You may cure the default within THIRTY (30) DAYS of the date of this notice **BY PAYING THE TOTAL AMOUNT PAST DUE TO THE LENDER,** WHICH IS $270, 890.84 as of 5/1/05 plus additional daily interest of $51.22 on

the principle amount of $267,049.71 since 5/1/05 AND TAKE ALL ACTIONS REQUIRED BY PARAGRAPH 2 OF THE MORTGAGE.

Payments must be made either by cash, cashier's check, certified check or money order made payable and sent to:

Old Order Amish Helping Program

285 Smith Road

Millersburg PA 17061

You can cure any other default by taking the following action within THIRTY (30) DAYS of the date of this letter: Take all actions required by paragraph 2 of the Mortgage including maintaining Amish Aid coverage.

IF YOU DO NOT CURE THE DEFAULT- If you do not cure the default within THIRTY (30) DAYS of the date of this Notice, the lender also intends to instruct its attorneys to start legal action to **foreclose upon your mortgaged property.**

IF THE MORTGAGE IS FORECLOSED UPON- The mortgaged property will be sold by the Sheriff to payoff the mortgage debt. If the lender refers your case to its attorneys, you will have to pay all reasonable attorney's fees actually incurred by the lender. Any attorney's fees will be added to the amount you owe the lender, which may also include other reasonable costs. **If you cure the default within the THIRTY (30) DAY period, you will not be required to pay attorney's fees.**

OTHER LENDER REMEDIES- The lender may also sue you personally for the unpaid principal balance and all other due under the mortgage.

RIGHT TO CURE THE DEFAULT PRIOR TO SHERIFF'S SALE- If you have not cured the default within the THIRTY (30) DAY period and foreclosure proceedings have begun, you still have the right to cure the default and prevent the sale at any time up to one hour before the Sheriffs Sale. You may do so by paying the total amount then due plus reasonable attorney's fees and costs connected with the foreclosure sale and any other costs connected with the Sheriffs Sale as specified in writing by the lender and by performing any other requirements under the mortgage. **Curing your default in the manner set forth in this notice will restore your mortgage to the same position as if you had never defaulted.**

EARLIEST POSIBLE SHERIFF'S SALE DATE- It is estimated that the earliest date that such a Sheriff's sale of the mortgaged property could be held would be **approximately six (6) months from the date of this Notice.** A notice of the actual date of the Sheriff's Sale will be sent to you before the sale. Of course, the amount needed to cure the default will increase the longer you wait. You may find out at any time exactly what the required payment or action will be by contacting the lender.

HOW TO CONTACT THE LENDER:

Name of Lender: Old Order Amish Helping Program

Address: 285 Smith Road, Millersburg PA 17061

Phone Number: (717) 362-4406
Contact Person: Levi Esh

EFFECT OF SHERIFF'S SALE- You should realize that a Sheriff's Sale will end your ownership of the mortgaged property and your right to occupy it. If you continue to live in the property after the Sheriff's Sale, a lawsuit to remove you and your furnishings and other belongings could be started by the lender at any time.

ASSUMPTION OF MORTGAGE- You **may** or X **may not** (CHECK ONE) sell or transfer your home to a buyer or transferee who will assume the mortgage dept, provided that all the outstanding payments, charges and attorney's fees and costs are paid prior to or at the sale and that the other requirements of the mortgage are satisfied.

YOU MAY ALSO HAVE THE RIGHT:

- TO SELL THE PROPERTY TO OBTAIN THE MONEY TO PAY OFF THE MORTGAGE OR DEBT OR BORROW MONEY FROM ANOTHER LENDING INSTITUTION TO PAY OFF THE DEBT.
- TO HAVE THIS DEFAULT CURED BY ANY THIRD PARTY ACTING ON YOUR BEHALF.
- TO HAVE THE MORTGAGE RESTORED TO THE SAME POSITION AS IF NO DEFAULT HAD OCCURED, IF YOU CURE THE DEFAULT. (HOWEVER, YOU DO NOT HAVE THIS RIGHT TO CURE YOUR DEFAULT MORE THAN THREE TIMES IN ANY CALENDER YEAR.)

- TO ASSERT THE NONEXISSTENCE OF A DEFAULT IN ANY FORCLOSURE PROCEEDING OR ANY OTHER LAWSUIT INSTITUTED UNDER THE MORTGAGE DOCUMENTS.
- TO ASSERT ANY OTHER DEFENCE YOU BELIEVE YOU MAY HAVE TO SUCH ACTION BY THE LENDER.
- TO SEEK PROTECTION UNDER THE FEDERAL BANKRUPTCY LAW.

CONSUMER CREDIT COUNSELING AGENCIES SERVING YOUR COUNTY

(Fill in a list of all Counseling Agencies, FOR THE COUNTY in which the property is located, using additional pages if necessary)

CCCS of Lehigh Valley
3671 Crescent Court East
Whitehall, PA 18052
(610) 821-4011 OR 1-800-220-2733

CCCS of Western PA, Inc.
Colonial Shopping Center
970 S. George Street
York , PA 17403
888-511-2227

Tabor Community Services, Inc.

439 East King Street

PO Box 1676

Lancaster, PA 17608-(717) 397-5182 OR 1-800-788-5062

ATTACHMENT #1
ORDERS IN QUESTION

IN THE COURT OF COMMON PLEAS OF
LANCASTER COUNTY, PENNSYLVANNIA

PSR KIRKWOOD, LLC, LITTLE ELK CREEK FARM, LLC and PSR LANCATER, LLC,

No: CI 08 07341

Plaintiffs,

v.

DANIEL E. STOLZFUS and SAVILLA E. STOLTZFUS

Defendants.

ENTERED AND FILED
09 MAR 16 PM 3:11
PROTHONOTARYS OFFICE
LANCASTER PA

ORDER

AND NOW, this 16th day of March, 2009, upon consideration of the within Motion to Set Aside the June 27, 2007 Sheriff's Sale and this Ejectment Action and/or Issue a Stay Upon the Lancaster County Sheriff, it is hereby ORDERED. DENIED

~~(1) The June 27, 2007 Sheriff's Sale of Defendants' Property shall be set aside.~~

~~(2) This Court lacks jurisdiction subject-matter jurisdiction to hear this Ejectment Action;~~

~~(3) The Lancaster County Sheriff shall not evict Defendants from the address of 834 Pumping Station Road, Kirkwood, Pennsylvania until future notice from this Court.~~

BY THE COURT:

Attc Gerhart

"s/"

cc Alexander G Tuttle Esq

KNISELY, J.

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA R.C.P. NO. 236
NOTIFICATION: THE ATTACHED DOCUMENT
HAS BEEN FILED IN THE CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE: 3-16-09

EXHIBIT B

PSR Kirkwood, LLC, et al.	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
	:	
	:	(C.P. LANCASTER COUNTY
v.	:	NO. CI-08-07341)
	:	
	:	NO. 617 MDA 2009
Daniel E. Stoltzfus, et al.	:	Filed: August 3, 2009

ORDER

The motion to quash or dismiss this appeal is **GRANTED** as follows:

This appeal is hereby **QUASHED**.

Per Curiam

ATTAHMENT #2
OPINIONS DELIVERED

IN THE COURT OF COMMON PLEAS OF
LANCASTER COUNTY, PENNSYLVANNIA

PSR KIRKWOOD, LLC, LITTLE ELK CREEK FARM, LLC and PSR LANCATER, LLC,

No. CI 08 07341

Plaintiffs,

v.

DANIEL E. STOLZFUS and SAVILLA E. STOLTZFUS

Defendants.

ENTERED AND FILED
09 MAR 16 PM 3:11
PROTHONOTARY'S OFFICE
LANCASTER PA.

ORDER

AND NOW, this 16th day of March, 2009, upon consideration of the within Motion to Set Aside the June 27, 2007 Sheriff's Sale and this Ejectment Action and/or Issue a Stay Upon the Lancaster County Sheriff, it is hereby ORDERED, Denied.

~~(1) The June 27, 2007 Sheriff's Sale of Defendants' Property shall be set aside.~~

~~(2) This Court lacks jurisdiction subject-matter jurisdiction to hear this Ejectment Action.~~

~~(3) The Lancaster County Sheriff shall not evict Defendants from the address of 834 Pumping Station Road, Kirkwood, Pennsylvania until future notice from this Court.~~

BY THE COURT

Attc Gerkartee

Alexander G. Tuttle, Esq.

"s/"

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. NO 236
NOTIFICATION: THE ATTACHED DOCUMENT
HAS BEEN FILED IN THIS CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE: 3-17-09

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA CIVIL DIVSION

PSR KIRKWOOD LLC; LITTLE CREEK, FARM, LLC and PSR LANCASTER, LLC,

Appellees,

v.

No. CI-08-07341

Ejectment Book 5, Page 351

DANIEL E. STOLTZFUS and SAVILLA E. STOLTZFUS,

Appellants.

ENTERED AND FILED
09 MAR 16 PM 3:11
PROTHONOTARY'S OFFICE
LANCASTER PA

OPINION

BY: KNISELY, J.
June 5, 2009

Daniel E. Stoltzfus and Savilla E. Stoltzfus have appealed this Court's March 16, 2009 Order denying their motion to set aside sheriff's sale and stay execution of ejection. This opinion is written pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure.

The instant ejection action came to the Court following a foreclosure auction wherein Appellants jointly entered a settlement agreement and mutual release[1] with the other parties. Judgment was entered against Appellants pursuant to the agreement on January 10, 2007.

[1] *Old Order Amish Helping Program v. Daniel E. Stoltzfus and Savilla E. Stoltzfus*, No. CI-05-07927 (Pa. Com. Pl. Nov. 13, 2006)

The property subject to foreclosure, 834 Pumping Station Road in Kirkwood Pennsylvania (the "Property"), was sold at Sheriff's sale to John R. Glick on June 27, 2007[2]. The Deed for the Property was delivered and recorded. After the sale, Appellants filed a petition to set aside the Sheriff's Sale which was denied on December 6, 2007 by the Honorable Dennis E. Reinaker denied their petition on December 19, 2007. Their appeal to the Superior Court of Pennsylvania has been quashed.

When Appellants failed to vacate the Property, Appellees initiated this ejectment action on July 1, 2008. On November 14, 2008, Appellants again entered a joint settlement agreement consenting to entry of judgment in favor of Appellees and issuance of a Writ Possession for Appellees for the Property. By order of November 17, 2008, the Honorable James P. Cullen, granted the joint motion and entered judgment of possession in favor of Appellees. Appellants then filed a chapter 13 case in the United States Bankruptcy Court on November 26, 2008, which stayed the ejectment. The Honorable Bruce Fox terminated the stay on January 21, 2009 stating, "[O]nce the foreclosure sale took place prepetition, the debtor had no right to cure or reinstate his mortgage under Pennsylvania law." *In re Daniel Stoltzfus*, Bankruptcy No. 08-17813 (Jan. 21, 2009) (internal citations omitted).

Appellants then petitioned the United States District Court on February 4, 2009 for a temporary restraining order. Based on misrepresentations of the procedural history by Appellants' counsel, the Honorable Lawrence F. Stengel granted the temporary relief. *See Daniel Stoltzfus, et al. v. Old Order Amish Helping Program, et al.*, No.

---

[2] Mr. Glick later transferred his interest in the property to Appellees, three limited liability companies, and the Deed was recorded on February 12, 2008.

09-491, memorandum at 4-6 (Feb. 26, 2009). During an *ex parte* emergency conference, Appellants failed to inform Judge Stengel that they consented to both the entry of judgment for mortgage foreclosure action as well as the entry of judgment for possession. *Id.* at 5. Also, Appellants indicated that exceptions to the Sheriff's Sale had been filed, but those exceptions were fully litigated and the appeal was quashed. *Id.* Had Judge Stengel been apprised of such information, he would not have issued the temporary restraining order. *Id.* Considering the defendants' more accurate

---

depiction of the record, Judge Stengel found the Stoltzfus' could not satisfy the irreparable harm prong required for granting of a preliminary injunction. *Id.* at 6.

Appellants filed their motion to set aside the sheriff's sale and stay execution of ejectment on March 16, 2009, two days before the sheriff's scheduled ejectment. Counsel for both sides appeared in chambers on March 16, 2009. Based on a review of the docket and lengthy procedural history of this case, I found Appellants' motion to be a transparent attempt to further stay the ejectment and avoid compliance with the terms of their settlement agreements. I denied Appellations motion on March 16, 2009. Appellants again rushed to Bankruptcy Court and were granted a temporary stay until the Bankruptcy Court heard that the history of this protracted abuse by Appellants' counsel. This appeal followed.

Appellants' counsel has fully exhausted and abused appellate procedures in order to stay the ejectment and writ of possession to which they consented. Counsel proceeded to file in federal district court

despite Judge Fox noting the Rooker-Feldman doctrine prohibiting lower federal courts from sitting as effective courts of appeal for state court judgments. Statement of Reasons in Support of Order, *In re Daniel Stoltzfus*, Bankruptcy No. 08-17813 at 6 (Jan. 21 2009). Counsel then obtained a temporary restraining order by misrepresenting the history of the case before a federal judge. The motion for stay filed in this Court represents counsel's continued abuse upon the court system to serve no other purpose than delay.

Counsel has failed in his obligation of candor with the many Courts he has addressed and for totally vexatious and dilatory purposes made filings with the Court that are both groundless

---

and perhaps in violation of the Rules of Professional Conduct, Rules 3.1, 3,3, and 8.4. All matters on appeal have been litigated or waived by Appellants based on the history of the case.[3]

Accordingly, the Order of this Court should be affirmed and Appellants' appeal dismissed.

BY THE COURT:

"s/"

HOWARD F. KNISELY

JUDGE

---

[3] Additionally, it should be noted that the Appellants have been ejected as of April 24, 2009 at 9:00 a.m. from the subject Property by Lancaster County Sheriff's Department, with the assistance of the Pennsylvania State Police, a SERT team member, an ambulance crew, and a representative of the Lancaster County Children and Youth Agency.

Attest:

Copies to: Alexander Tuttle, Esq., 2880 Bergey Rd., Ste Hatfield, PA 1940

Eric Winkle, Esq., 262 West Roseville RD., Lancaster, Pa 17601

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. NO 236
NOTIFICATION: THE ATTACHED DOCUMENT
HAS BEEN FILED IN THIS CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE: 6-5-06

APPENDIX B

PSR Kirkwood, LLC, et al.	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
	:	
	:	(C.P. LANCASTER COUNTY
v.	:	NO. CI-08-07341)
	:	
	:	NO. 617 MDA 2009
Daniel E. Stoltzfus, et al.	:	Filed: August 3, 2009

ORDER

The motion to quash or dismiss this appeal is **GRANTED** as follows:

This appeal is hereby **QUASHED.**

Per Curiam

IN THE SUPREME COURT OF PENNSLYANIA

DANIEL E. STOLTZFUS and SAVILLA E. STOLTZFUS

Appellants,

v.

PSR KIRKWOOD, LLC, PSR LANCASTER, LLC and LITTLE ELK CREEK FARM, LLC

Appellees.

Appeal from Order entered in the
Superior Court under docket number 617
MDA 2009 entered on August 3, 2009

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Appellants in this action and further certify that on August 31, 2009, I have served a copy of the within Petition for Allocator on the following party by First Class U.S. Postal Mail:

Eric L. Winkle, Esq.
363 West Roseville Road
Lancaster, PA 17601

"s/"
Alexander Tuttle, Esq.

Dated: August 31, 2009

APPENDIX B

ACT 91 NOTICE
TAKE ACTION TO SAVE YOUR HOME FROM FORECLOSURE

This is an official notice that the mortgage on your home is in default, and the lender intends to foreclose. Specific information about the nature of the default is provided in the attached pages.

The HOMEOWNER'S EMERGENCY MORTGAGE ASSISTANCE PROGRAM (HEMAP) may be able to help to save your home. This Notice explains how the program works. To see if HEMAP can help, you must MEET WITH A CONSUMER CREDIT COUNSELLING AGENCY WITHIN 33 DAYS OF THE DATE OF THIS NOTICE. Take this Notice with you when you meet with the Counseling Agency.

The name, address and phone number of Consumer Credit Counseling Agencies serving your County are listed at the end of this Notice. If you have any questions, you may call the Pennsylvania Housing Finance Agency toll free at 1-800-342-2397. (Persons with impaired hearing can call (717) 780-1869).

This Notice contains important legal information. If you have any questions, representatives at the Consumer Credit Counseling Agency may be able to help explain it. You may also want to contact an attorney in your area. The local bar association may be able to help you find a lawyer.

1.

HOMEOWNER'S NAME(S):

_____

_____

PROPERTY ADDRESS:

_____

_____

LOAN ACCT. NO.:

_____

ORIGINAL LENDER:

_____

CURRENT LENDER/SERVICER:

_____

HOMEOWNER'S EMERGENCY MORGAGE ASSISTANCE PROGRAM

YOU MAY BE ELIGIBLE FOR FINANCIAL ASSISTANCE WHICH CAN SAVE YOUR HOME FROM FORECLOSURE AND HELP YOU MAKE FUTURE MORTGAGE PAYMENTS

IF YOU COMPLY WITH THE PROVISIONS OF THE HOMEOWNNER'S EMERGENCY MORTGAGE ASSISTANCE ACT OF 1983 (THE "ACT"), YOU MAY BE ELIGIBLE FOR EMERGENCY MORTGAGE ASSISTANCE:

- IF YOUR DEFAULT HAS BEEN CAUSED BY CIRCUMSTANCES BEYOND YOUR CONTROL,
- IF YOU HAVE A REASONABLE PROSPECT OF BEING ABLE TO PAY YOUR MORTGAGE PAYMENTS, AND
- IF YOU MEET OTHER ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE

PENNSYLVANIA HOUSING FINANCE AGENCY.

TEMPORY STAY OF THE FORECLOSURE- Under the Act, you are entitled to a temporary stay of foreclosure on your mortgage for thirty (30) days from the date of this Notice (plus three (3) days for mailing). During that time you must arrange and attend a "face-to-face" meeting with one of the consumer credit counseling agencies listed at the end of this notice. **THIS MEETING MUST OCCUR WITHIN THIRTY-THREE (33) DAYS OF THE DATE OF THIS NOTICE.** IF YOU DO NOT APPLY FOR EMERGENCY MORTGAGE ASSISTENCE, YOU MUST BRING YOUR MORTGAGE UP TO DATE. THE PART OF THIS NOTICE CALLED "HOW TO CURE YOUR MORTGAGE DEFAULT", EXPLAINS HOW TO BRING YOUR MORTGAGE UP TO DATE.

CONSUMER CREDIT COUNSELING AGENIES – If you meet with one of the consumer credit counseling agency listed at the end of this notice, the lender may NOT take action against you for thirty (30) days after the date of this meeting. The names, addresses and telephone numbers of designated consumer credit counseling agencies for the county in which the property is located are set forth at the end of this notice. It is only necessary to schedule one face to face meeting. Advise your lender immediately of your intentions.

APPLICATION FOR MORTGAGE ASSISTANCE – Your mortgage is in default for the reasons set forth later in this Notice (see following pages for specific information about the nature of your default.) You have the right to apply for financial assistance from

the Homeowner's Emergency Mortgage Assistance Program. To do so, you must fill out, sign and file a completed Homeowner's Emergency Assistance Program Application with one of the designated consumer credit counseling agencies listed at the end of this Notice. Only consumer credit counseling agencies have applications for the program and they will assist you in submitting a complete application to the Pennsylvania Housing Finance Agency. To temporarily stop the lender from filing a foreclose action, your application MUST be forwarded to PHFA and received within thirty (30) days of your face-to-face meeting with the counseling agency
YOU SHOULD FILE A HEMAP APPLICATION AS SOON AS POSSIBLE. IF YOU HAVE A MEETING WITH A COUNSELING AGENCY WITHIN 33 DAYS OF THE POSTMARK DATE OF THIS NOTICE AND FILE AN APPLICATION WITH PHFA WITHIN 30 DAYS OF THAT MEETING, THEN THE LENDER WILL BE TEMPORARILY PREVEVTED FROM STARTING A FORECLOSURE AGAINST YOUR PROPERTY, AS EXPLAINED ABOVE, IN THE SECTION CALLED "TEMPORY STAY OF FORECLOSURE".

YOU HAVE THE RIGHT TO FILE A HEMAP APPLICATION EVEN BEYOND THESE TIME PERIODS. A LATE APPLICATION WILL NOT PREVENT THE LENDER FROM STARTING A FORCLOSUER ACTION, BUT IF YOUR APPLICATION IS EVENTUALLY APPROVED AT ANY TIME BEFORE A SHERIFF'S SALE, THE FORCLOSURE WILL BE STOPPED.

AGENCY ACTION--Available funds for emergency mortgage assistance are very limited. They will be disbursed by the Agency under the eligibility criteria established by the Act. The Pennsylvania Housing Finance Agency has sixty (60) days to make action decision after it receives your application. During that time, no foreclosure proceedings will be pursued against you if you have met the time requirements set fourth above. You will be notified directly by the Pennsylvania Housing Finance Agency of its decision on your application.

NOTE: IF YOU ARE CURRENTY PROTECTED BY THE FILING OF A PETITION IN BAKRUPTCY, THE FOLLOWING PART OF THIS NOTICE IS FOR INFORMATION PURPOSES ONLY AND SHOULD NOT BE CONSIDERED AS AN ATTEMPT TO COLLECT THE DEBT.
(If you have filed bankruptcy you can still apply for Emergency Mortgage Assistance.)

HOW TO CURE YOUR MORTGAGE DEFAULT (Bring it up to date).
NATURE OF THE DEFAULT--The MORTGAGE debt held by the above lender on your property located at:

_____

_____

IS SERIOUSLY IN DEFAULT because:

A. YOU HAVE NOT MADE MONTHLY MORTGAGE PAYMENTS for the following months and the following amounts are now past due:

_____

_____

Other charges (explain/ itemize): _____

_____

TOTAL AMOUNT PAST DUE: _____

B. YOU HAVE FAILED TO TAKE THE FOLLOWING ACTION (Do not use if not applicable):

_____

_____

_____

_____

_____

_____

_____

HOW TO CURE THE DEFAULT--You may cure the default within THIRTY (30) DAYS of the date of this notice **BY PAYING THE TOTAL AMOUNT PAST DUE TO THE LENDER**, WHICH IS $_____, PLUS ANY MORTGAGE PAYMENTS AND LATE CHARGES WHICH BECOME DUE DURING THE THIRTY (30) DAY PERIOD. Payments must be made either by cash, cashier's check or money order made payable and sent to:

_____

_____

_____

You can cure any other default by taking the following

action within THIRTY (30) DAYS of the date of this letter: (Do not use if not applicable.)

_____

_____

3

IF YOU DO NOT CURE THE DEFAULT--If you do not cure the default within THIRTY (30) DAYS of the date of this Notice, **the lender intends to exercise its rights to accelerate the mortgage debt.** This means that the entire outstanding balance of this debt will be considered due immediately and you may lose the chance to pay the mortgage in monthly installments. If full payment of the total amount past due is not made within THIRTY (30) DAYS, the lender also intends to instruct its attorneys to start legal action to **foreclose upon your mortgaged property.**

IF THE MORTAGAE IS FORECLOSED UPON--The mortgaged property will be sold by the Sheriff to pay off the mortgage debt. If the lender refers your case to its attorneys, but you cure the delinquency before the lender begins legal proceeding against you, you will still be required to pay the reasonable attorney's fees that were actually incurred, up to $50.00. However, if legal proceeding are started against you, you will have to pay all reasonable attorney's fees actually incurred by the lender even if they exceed $50.00. Any attorney's fees will be added to the amount you owe the lender, which may also include other reasonable costs. **If you cure the default within the THIRTY (30) DAY period, you will not be required to**

pay attorney's fees.

OTHER LENDER REMEDIES The lender may also sue you personally for the unpaid principle balance and all other sums due under the mortgage._

RIGHT TO CURE THE DEFAULT PRIOR TO SHERIEE'S SALE--If you have not cured the default within the THIRTY (30) DAY period and foreclosure proceeding have begun, you still have the right to cure the default and prevent the sale at any time up to one hour before the Sheriff's Sale. You may do so by paying the total amount then past due, plus any late or other charges then due, reasonable attorney's fees and costs connected with the foreclosure sale and any other costs connected with the Sheriff's Sale as specified in writing by the lender and by performing any other requirements under the mortgage. **Curing your default in the manner set forth in this notice will restore your mortgage to the same position as if you had never defaulted.**

EARLIST POSSIBLE SHERIFF'S SALE DATE-- It is estimated that the earliest date that such a Sheriff's Sale of the mortgaged property could be held would be **approximately months from the date this of this Notice.** A notice of the actual date of the Sheriff's Sale will be sent to you before the sale. Of course, the amount needed to cure the default will increase the longer you wait. You may find out at any time exactly what the required payment or action will be by contacting the lender.

HOW TO CONTACT THE LENDER:

Name of

Lender: _____

Address: _____

_____

Phone Number: _____

Fax Number: _____

Contact Person: _____

E-Mail Address: _____

EFFECT OF SHERIFF'S SALE -- You should realize that a Sheriff's Sale will end your ownership of the mortgaged property and your right to occupy it. If you continue to live in the property after the Sheriff's Sale, a lawsuit to remove you and your furnishing and other belongings could be started by the lender at any time.

ASSUMPTION OF MORTGAGE -- You ___ may or ___ may not (CHECK ONE) sell or transfer your home to a buyer to transferee who will assume the mortgage debt, provided that all the outstanding payments, charges and attorney's fees and costs are paid prior to or at the sale and that the other requirements of the mortgage are satisfied.

YOU MAY ALSO HAVE THE RIGHT:

- TO SELL THE PROPERTY TO OBTAIN

MONEY TO PAY OFF THE MORTGAGE DEBT OR TO BORROW MONEY FROM ANOTHER LENDING INSTITION TO PAY OFF THIS DEBT.

- TO HAVE THIS DEFAULT CURED BY ANY THIRD PARTY ACTING ON YOUR BEHALF.

- TO HAVE THE MORTGAGE RESTORED TO THE SAME POSITION AS IF NO DEFAULT HAD OCCURRED, IF YOU CURE THE DEFAULT. (HOWEVER, YOU DO NOT HAVE THIS RIGHT TO CURE YOUR DEFAULT MORE THAN THREE TIMES IN ANY CALENDAR YEAR.)

- TO ASSERT THE NONEXISTENCE OF A DEFAULT IN ANY FORECLOSURE PROCEEDING OR ANY OTHER LAWSUIT INSTITUTED UNDER THE MORTGAGE DOCUMENTS,

- TO ASSERT ANY OTHER DEFENSE YOU BELIVE YOU MAY HAVE TO SUCH ACTION BY THE LENDER.

- TO SEEK PROTECTION UNDER THE FEDERAL BANKRUPTCY LAW.

CONSUMER CREDIT COUNSELING AGENCIES SERVING YOUR COUNTY

(Fill in action list of all Counseling Agencies listed in Appendix C, FOR THE COUNTY in which the property in located, using addition pages if necessary).

(2)

162

APPENDIX D, E, F&G

Supreme Court, U.S.
FILED
091411 MAY 17 2010
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

DANIEL E. STOLTZFUS and SAVILLA E. STOLTZFUS

Petitioners

v.

PSR KIRKWOOD LLC , PSR LANCASTER LLC , LITTLE ELK CREEK FARM LLC

Respondents

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Daniel E Stoltzfus
245 Cemetery Road
Nottingham, PA 19536
(215) 239-7553

LOAN INTEREST AND PROTECTION LAW
Act of Jan. 30, 1974, P.L. 13, No. 6

AN ACT

Regulating agreements for the loan or use of money; establishing a maximum lawful interest rate in the Commonwealth; providing for a legal rate of interest; detailing exceptions to the maximum lawful interest rate for residential mortgages and for any loans in the principle amount of more than fifty thousand dollars and Federally insured or guaranteed loans and unsecured, non collateralized loans in excess of thirty-five thousand dollars and business loans in excess of ten thousand dollars; providing protections to debtors to whom loans are made including the provision for disclosure of facts relevant to the making of residential mortgages, providing for notice of intention to foreclose and establishment of a right to cure defaults on residential mortgage obligations, provision for the payment of attorney's fees with regard to residential mortgage obligations and providing for certain interest rates by banks and bank and trust companies; clarifying the substantive law on the filing of and execution on a confessed judgment; prohibiting waiver of provisions of this act, specifying powers and duties of the Secretary of Banking, and establishing remedies and providing penalties for violations of this act, further providing for definitions, for maximum lawful interest rates, for residential mortgage interest rates, for penalties and for enforcement.

TABLE OF CONTENTS

Article I. Preliminary Provisions

Section 101. Definitions.

Article II. Maximum Lawful Interest Rate

Section 201. Maximum Law Interest Rate.
Section 202. Legal Rate of Interest.

Article III. Exceptions to Maximum Lawful Interest Rate

Section 301. Residential Mortgage Interest Rates.
Section 302. Federally Guaranteed Loans.
Section 303. Commitments to Enter Into Residential Mortgages.

Article IV. Protective Provisions

Section 401. Disclosure Requirements.
Section 401.1. Photocopies of Security Documents.
Section 402. Discount Points Prohibited.
Section 403. Notice of Intention to Foreclose.
Section 404. Right to Cure a Default.
Section 405. Prepayment Penalty Prohibited.
Section 406. Attorney's Fees Payable.
Section 407. Confession of Judgment.
Section 408. Waiver.

Article V. Remedies and Penalties.

Section 501. Excessive Interest Need Not Be Paid.
Section 502. Usuary and Excess Charges Recoverable.
Section 503. Reasonable Attorney's Fees Recoverable.
Section 504. Individual Actions Permitted.
Section 505. Penalties.
Section 506. Enforcement.
Section 507. Effect on Other Acts.

Article VI. General Provisions

Section 601. Regulations.
Section 602. Construction; Title of Purchaser.
Section 603. Repeals.
Section 604. Effect on Inconsistent Acts.
Section 605. Effective Date.

ARTICLE I
Preliminary Provisions

Section 101. Definitions.--As used in this act:

"Actual settlement costs" means reasonable sums paid for:
(a) Any insurance premiums which have been approved by the Insurance Commissioner of the Commonwealth.
(b) Title examination and search, and examination of public records.
(c) The preparation and recording of any or all

documents required by law or custom for settlement.

(d) Appraisal and/or survey of property securing the loan.

(e) A single service charge, which shall include any consideration paid by the residential mortgage debtor and received and retained by the residential mortgage lender for or related to the acquisition, making, refinancing or modification of a residential mortgage loan, plus any consideration received by the residential mortgage lender for making a mortgage commitment, whether or not an actual loan follows such commitment. The service charge shall not exceed one per cent of the original bona fide principal amount of the loan, except that in the case of a construction loan, the service charge shall not exceed two per cent of the original bona fide principal amount of the loan.

(f) Charges and fees necessary for or related to the transfer of the property or the closing of the residential mortgage loan, paid by the residential mortgage debtor and received by any party other then the residential mortgage lender, whether or not paid by residential mortgage debtor directly to the third party or to the residential mortgage lender for payment to the third party.

"Base figure" means two hundred seventeen thousand eight hundred seventy-three dollars ($217, 873), as adjusted annually for inflation by the department through notice published in the Pennsylvania Bulletin.

"Department" means the Department of Banking of the Commonwealth.

"Discount points" means any charges, whether or not actually denominated as "discount points," which are paid by the seller of residential real property to a residential mortgage.

"Finance charge" means the total cost of loan or charge for the use of money, including any extensions or grant of credit regardless of the characterization of the same and includes any interest, time price differential, points, premiums, finder's fees, and other charges levied by the residential mortgage lender directly or indirectly against the person obtaining the loan or against the seller, lender, mortgagee or any other party to the transaction except any actual settlement costs. The finance charges plus the actual settlement costs charged by the residential mortgage lender shall include all charges made by the residential mortgage lender to the residential mortgage debtor other than the principal of the loan. In computing finance charge on any mortgage which does not require the full amount of the first year's interest to be paid during the first year and on a variable interest rate mortgage interest shall be calculated at the rate applicable to the first year of the loan.

"Loan yield" means the annual rate of return obtained by a residential mortgage lender from a residential mortgage debtor over the term of

the loan and shall be determined in accordance with regulations issued by the Secretary of Banking. Such regulations shall establish the method for calculating such rate of return and shall provide that the finance charge be amortized over the contract term of the loan. In computing loan yield on any mortgage which does not require the full amount of the first year's interest to be paid during the first year and on a variable interest rate mortgage interest shall be calculated at the rate applicable to the first year of the mortgage.

"Monthly Index of Long Term United States Government Bond Yields" means the monthly unweighted average of the daily unweighted average of the closing bid yield quotations in the over the counter market for all outstanding United Stated Treasury Bond issues, based on available statistics, which are either maturing or callable in ten years or more. This index is expressed in terms of percentage interest per annum.

"Mortgage commitment" means a legally binding obligation to lend money on the security of a residential mortgage.

"Person" means an individual, corporation, business trust, estate trust, partnership or association or any other legal entity, and shall include but not be limited to residential mortgage lenders.

"Residential mortgage" means an obligation to pay a sum of money in an original bona fide

principal amount of the base figure or less, evidenced by a security document and secured by a lien upon real property located within this Commonwealth containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include such an obligation on a residential condominium unit.

"Residential mortgage debtor" means a non-corporate borrower who is obligated to a residential mortgage lender to repay in whole or in part a residential mortgage and a successor record owner of the property, if any, who gives notice thereof to the residential mortgage lender.

"Residential mortgage intermediary" means a real estate broker, mortgage broker or other person receiving directly or indirectly from a residential mortgage lender a finder's fee, commission, placement fee, service charge or other similar compensation other then actual settlement costs in conjunction with the issuance of a residential mortgage or mortgage commitment. Residential mortgage intermediary shall not mean an employee of a residential mortgage lender.

"Residential mortgage lender" means any person who lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt. The term shall also include the holder at any time of a residential

mortgage obligation.

"Residential real property" means real property located within this Commonwealth containing not more than two residential units or on which not more then two residential units are to be constructed and includes a residential condominium unit.

"Security document" means a mortgage, deed of trust, real estate sales contract or other document creating upon recordation a lien upon real estate.

ARTICLE II
Maximum Lawful Interest Rate

Section 201. Maximum lawful Interest Rate.--(a) Except as provided in Article III of this act, the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000) or less in all cases where no express contract shall have been made for a less rate shall be six per cent per annum.

(b) the maximum lawful rate of interest set forth in this section shall not apply to:
(i) an obligation to pay a sum of money in an original bona fide principal amount of more then fifty thousand dollars (50,000);
(ii) an unsecured, no collateralized loan in excess of thirty-five thousand dollars ($35,000). or
(iii) business loans of any principal amount.

ARTICLE III
Exceptions to Maximum Lawful Interest Rate

Section 301. Residential Mortgage Interest Rates.--(a) The General Assembly hereby finds that it is necessary and appropriate to establish a flexible maximum lawful interest rate for residential mortgages, as defined in this act, and further finds that the Monthly Index of Long Term United States Government Bond Yields is the appropriate basis on which such a maximum rate of interest may be established.

(b) The maximum lawful rate of interest for residential mortgages, as defined in this act, entered into or contracted for during any calendar month shall be equal to the Monthly Index of Long Term United

States Government Bond Yields for the second preceding calendar month plus an additional two and one half per cent per annum rounded off to the nearest quarter of one per cent per annum.

(c) On or before the twentieth day of each month, the Secretary of Banking (i) shall determine, based on available statistics, and (ii) shall determine the maximum lawful rate of interest for residential mortgage for the next succeeding month, as defined in subsection (b)

of this section, and shall cause such maximum lawful rate of interest to be filed with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin; such maximum lawful rate of interest to be effective on the first day of the next succeeding month.

(d) The loan yield obtained by a residential mortgage lender from the residential mortgage debtor shall not exceed the maximum lawful rate of interest for residential mortgages established in section 301 (b). A contract rate within the maximum lawful interest rate applicable to a residential mortgage at the time of the loan settlement shall be the maximum lawful interest rate for the term of the residential mortgage, except variable interest rate mortgages as set forth in section 301 (e).

In all proceedings and in all legal actions, the maximum lawful rate of interest for all residential mortgages, as defined in this act, as published in the Pennsylvania Bulletin by the Secretary of Banking shall be the maximum lawful rate of interest for residential mortgages, as defined in this act, except that variable interest for residential mortgages, as defined in this act, except that variable interest rate mortgages may be written provided no increase in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith shall be lawful unless such provision is set forth in such security document, or in any evidence of debt issued in connection therewith, or both, and

such document or documents contain the following provision:

(1) That the index for determining increase or decrease in interest rate shall be the lawful rate of interest as determined under subsection (a), (b) and (c) for residential mortgages.

(2) A requirement that when an increase in the interest rate is required by a movement in a particular direction of the prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.

(3) The rate of interest shall change not more often than once during any shall elapse between any two such changes.

(4) The change in the interest rate shall be one fourth of one per cent in any semiannual period, and shall not result in a rate more or less than two and five-tenths percentage points greater or less then the rate for the first loan payment due after the closing of the loan.

(5) The rate of interest shall not change during the annual period of the loan.
(6)Subject to the provisions of paragraphs (3), (4) and (5), an increase or decrease in the interest rate shall be effected when the index moves in such percentage that the difference between the present index rate

and present mortgage rate varies not less then one fourth of a percentage point from the difference between the index and mortgage rates at the date of the first contracted loan repayment.

5.

(7) The contracted periodic payment may at the option of the borrower be increased or decreased in dollar amount equal to any periodic increase or decrease in interest requirement, or the contracted periodic payment may at the option of the borrower be retained constant provided the maturity of the mortgage is not extended beyond forty years from the date of said mortgage or five year beyond the original maturity date for which said mortgage was written, whichever is the shorter.

(8) When a change in the interest rate is required or permitted by a movement in the prescribed index, the lender shall give notice to the borrower by mail, addressed to the borrower's last known post office address, not less than thirty days prior to any change in interest rate, which notice shall clearly and concisely disclose:
(i) the effective date of the interest rate change;
(ii) the interest rate change, and if an increase, the extent to which the increased rate will exceed the rate in effect immediately before the increase;
(iii) the changes in the index which caused

the interest rate change.
(iv) the amount of the borrower's contractual monthly principal and interest payments before and after the effective date of the change in the change in the interest rate, any change in the term of the mortgage and any option that the mortgage debtor may have to extend or reduce the mortgage term and retain constant periodic payments.

(9) A statement attached to the mortgage and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10 point bold type, consisting of the following language:
Notice to borrower: this document contains provisions for a variable interest rate.

(10) No residential mortgage lender may take a residential mortgage providing for a variable interest rate unless it has clearly and conspicuously disclosed to the mortgage debtor in the mortgage application:
(i) that the mortgage rate is subject to change in the future.
(ii) An explanation of the effect of changes in the index on the rate and term of mortgage.
(iii) An explanation of the index.
(iv) A statement in 10 point bold type containing the following language:
If the mortgage lender offers to give you a mortgage with a variable interest rate, you are entitled by law to also be offered a

mortgage with and interest rate which will not change. By law, this fixed interest rate mortgage must be offered to you at reasonably competitive terms and rate.

(11) The Secretary of Banking may by regulation prescribe language and forms which shall be deemed to comply with these disclosure requirements with the exception of the language contained in subsection (e)(9) and 10(iv).

(f) The maximum lawful rate of interest set forth in this section shall not apply to (i) an obligation to pay a sum of money in an original bona fide principal amount of more then the base figure; (ii) an obligation to pay a sum of money in an original bone file principal amount of the base figure or less, evidenced by a security document and secured by a lien upon real property, other than residential real property as defined in this act; [(iii) and (iv) deleted] or (v) business loans of any principal amount.

6.

Section 302. Federally Guaranteed Loans. The maximum lawful rate of interest prescribed in sections 201 and 301 of this act shall not apply to any loan insured or guaranteed in whole or part by the Federal Housing Administration, The Veterans Administration or any other department or agency of the United States Government: Provided, That any such loan is subject to a maximum rate of interest

established by law or by such department or agency.

Section 303. Commitments to Enter Into Residential Mortgages. A residential mortgage commitment which provides for consummation within some future time following the issuance of the mortgage commitment may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum lawful rate of interest at the time the residential mortgage is entered into is less than the commitment rate of interest, provided:

(1) The commitment rate of interest does not exceed the maximum lawful interest rate in effect on the date the mortgage commitment was issued;

(2) The mortgage commitment when agreed to by the borrower shall constitute a legally binding obligation on the part of the residential mortgage lender to make a residential mortgage loan within a specified time period in the future at a rate of interest not exceeding the maximum lawful rate of interest effective as of the date of commitment offer.

ARTICLE IV
Protective Provisions

Section 401. Disclosure Requirements.--A residential mortgage lender shall provide to the residential mortgage debtor disclosures required by the "Truth in Lending Act," Title I, Public Law 90-321, 82 Stat. 146, and the "Real Estate Settlement Procedures Act of 1974," Public Law 93-533, 88 Stat. 1724, and regulations adopted pursuant thereto.

Section 401.1. Photocopies of Security Documents.-- The copy of any security document required to be furnished to a residential mortgage debtor by the provisions of this act or any regulation promulgated pursuant thereto may be a photocopy thereof.

Section 402. Discount Points Prohibited.--With the exception of those residential mortgages guaranteed or insured in whole or in part by the Federal Government, or agency thereof, as enumerated in section 302 of this act, and with the exception of any actual settlement costs (but not discount points, as defined in this act) paid by a seller of real estate, it shall be unlawful for a residential mortgage lender to charge to or receive from a seller of real estate, directly or indirectly any discount points.

Section 403. Notice of Intention to Foreclose.--(a) Before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation, commence any legal action including mortgage foreclosure to recover under such obligation, or take possession of any security of the residential mortgage debtor for such

residential mortgage obligation, such person shall give the residential mortgage debtor notice of such intention thirty days in advance as provided in this section.

(b) Notice of intention to take action as specified in subsection (a) of this section shall be in writing, sent to the residential mortgage debtor by registered or certified mail at his last known address and, if different, at the residence which is the subject of the residential mortgage.

(c) The written notice shall clearly and conspicuously state:

(1) The particular obligation or real estate security interest;

(2) The nature of the default claimed;

(3) The right of the debtor to cure the default as provided in section 404 of this act and exactly what performance including what sum of money, if any, must be tendered to cure the default;

(4) The time within which the debtor must cure the default;

(5) The method or methods by which the debtor's ownership or possession of the real estate may be terminated; and

(6) The right of the debtor, if any, to transfer the real estate to another person subject to the security interest or to refinance the obligation and of the transferee's right, if any, to cure the default.

(d) The notice of intention to foreclose provided in this section shall not be required where the residential mortgage debtor, has abandoned or voluntarily surrendered the property which is the subject of a residential mortgage.

Section 404. Right to Cure a Default.--(a) Notwithstanding the provisions of any other law, after a notice of intention to foreclose has been given pursuant to section 403 of this act, at any time at least one hour prior to the commencement of binding at a sheriff's sale or other judicial sale on a residential mortgage obligation, the residential mortgage debtor or any one in his behalf, not more than three times in any calendar year, may cure his default and prevent sale or other disposition of the real estate and avoid acceleration, if any, by tendering the amount or performance specified in subsection (b) if this section.

(b) To cure a default under this section, a residential mortgage debtor shall:

(1) Pay or tender in the form of cash, cashier's check, all sums which would have been due at the time of payment or tender in the absence of default and the exercise of an acceleration clause, if any;

(2) Perform any other obligation which he would have been bound to perform in the absence of default or the exercise of an acceleration clause, if any;

(3) Pay or tender any reasonable fees allowed under section 406 and the reasonable costs of proceeding to foreclosure as specified in writing by the residential mortgage lender actually incurred to the date of payment.

(4) Pay any reasonable late penalty, if provided for in the security document.

(c) Cure of a default pursuant to this section restores the residential mortgage debtor to the same position as if the default had not occurred.

Section 405. Prepayment Penalty Prohibited - Residential mortgage obligations contracted for on or after the effective date of this act may be prepaid without any penalty or other charge for such prepayment at any time before the end of the period of the loan.

Section 406. Attorney's Fees Payable. - With regard to residential mortgages, no residential mortgage lender shall contract for or receive attorney's fees from a residential mortgage debtor except as follows:

(1) Reasonable fees for services included in

actual settlement costs.

(2) Upon commencement of foreclosure or other legal action with respect to a residential mortgage, attorney's fees which are reasonable and actually incurred by the residential mortgage lender may be charged to the residential mortgage debtor.

(3) Prior to commencement of foreclosure or other legal action attorneys' fees which are reasonable and actually incurred not in excess of fifty dollars ($50) provided that no attorneys' fees may be charged for legal expenses incurred prior to or during the thirty-day notice period provided in section 403 of this act.

Section 407. Confession of Judgment.--(a) As to any residential real property, a plaintiff shall not have the right to levy, execute or garnish on the basis of any judgment or decree on confession, whether by amicable action or otherwise, or on a note, bond or other instrument in writing confessing judgment until plaintiff, utilizing such procedures as may be provided in the Pennsylvania Rules of Civil Procedure, files an appropriate action and proceeds to judgment or decree against defendant as in original action. The judgment by confession shall be changed as may be appropriate by a judgment, order or decree entered by the court in the action. After the above mentioned original action has been prosecuted and judgment obtained, that judgment shall merge with the confessed

judgment and the confessed judgment shall be conformed as to amount and execution shall be had on the confessed judgment. The parties to the action shall have the same rights as parties to other original proceedings. Nothing in this act shall prohibit a residential mortgage lender from proceeding by action in mortgage foreclosure in lieu of judgment by confession if the residential mortgage lender so desires.

(b) Any debtor who prevails in any action to remove, suspend or enforce a judgment entered by confession shall be entitled to recover reasonable attorney's fees and costs as determined by the court.

(c) Hereafter when any plaintiff has received payment in full for any judgment entered by confession shall order the record in the proceeding marked satisfied within thirty days of the receipt thereof, and shall not require any action on the part of the defendant or any payment by him to cover the cost of satisfying the judgment.

Section 408. Waivers.--Notwithstanding any other law, the provisions of this act may not be waived by any oral or written agreement executed by any person.

ARTICLE V
Remedies and Penalties

Section 501. Excessive Interest Need Not Be Paid.--When a rate of interest for the loan or use of money, exceeding that provided by this act or otherwise by law shall have been reserved or contracted for, the borrower or debtor shall not be required to pay to the creditor the excess over such maximum interest rate and it shall be lawful for such borrower or debtor, at his opinion, to retain and deduct such excess from the amount of such debt providing the borrower or debtor gives notice of the asserted excess to the creditor.

Section 502. Usury and Excess Charges Recoverable. A person who has paid a rate of interest for the loan or use of money at a rate in excess of that provided for by this act or otherwise by law or has paid charges prohibited or in excess of those allowed by this act or otherwise by law may recover triple the amount of such excess interest or charges in a suit at law against the person who has collected such excess interest or charges: Provided, That no action to recover such excess shall be sustained in any court of this Commonwealth unless the same shall have been commenced within four years from and after the time of such payment. Recovery of triple the amount of such excess interest or charges, but not the actual amount of such excess interest or charges, shall be limited to a four year period of the contract.

Section 503. Reasonable Attorney's Fees Recoverable.--(a) If a borrower or debtor,

including but not limited to a residential mortgage debtor, prevails in an action arising under this act, he shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his behalf in connection with the prosecution of such action, together with a reasonable amount for attorney's fee.

(b) The award of attorney's fees shall be in an amount sufficient to compensate attorneys representing debtors in actions arising under this act as provided in subsection (a) of this section. In determining the amount of the fee, the court may consider:

(1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the case.

(2) The customary charges of the members of the bar for similar services.

(3) The amount involved in the controversy and the benefits resulting to the clients from the services.

(4) The contingency or the certainty of the compensation.

(c) Any time attorneys' fees are awarded pursuant to any provision of this act, a borrower or debtor shall not be entitled to duplicate recovery of attorneys' fees under this section, sections 407 or 504 or any other

provision of this act.

Section 504. Individual Actions Permitted.--Any person affected by a violation of the act shall have the substantive right to bring an action on behalf of himself individually for damages by reason of such

conduct or violation, together with costs including reasonable attorney's fees and such other relief to which such person may be entitled under law.

Section 505. Penalties.--(a) Any person who knowingly and intentionally violates the provisions of this act shall be guilty of a misdemeanor of the third degree.

(b) Any person who violates a provision of this act shall be subject to a fine levied by the department of ten thousand dollars ($ 10,000) per offense.

Section 506. Enforcement.--(a) When the Attorney General has reason to believe that any person has violated the provisions of this act, or the regulations promulgated hereunder, he shall have standing to bring a civil action for injunctive relief and such other relief as may be appropriate to secure compliance with this act or the regulations promulgated hereunder.

(b) The department may examine any instrument, document, account, book, record

electronic data or file of any person, or make such other investigation as may be necessary to administer the provisions of this act. Any person subject to examination or investigation shall pay the department any costs associated with such examination or investigation. In connection with any examination or investigation authorized by this act, the department shall have the power to issue subpoenas requiring the attendance of, or the production of pertinent books, papers, electronic data or information of any kind which is in any form by, the officers, directors, agents, employees, or members, respectively, of any person which the department is authorized, under the provisions of this act, to examine. The department shall have power to issue subpoenas to any other person or entity of any kind whatsoever provided that the information from such person or entity is necessary for the enforcement of this act. The department shall also have the power to question such witnesses under oath or affirmation, and to examine such books and papers. Any witness who refuses to obey a subpoena issued under this section, or who refuses to be sworn or affirmed, or to testify, or is guilty of any contempt after summons to appear, may be found in contempt of court. For this purpose, an application may be made to Commonwealth Court or any court of common pleas within those territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.

(c) If the department determines that a person

has violated the provisions of this act, the department may do any of the following:

(1) Suspend, revoke or refuse to renew any license issued to the person by the department.

(2) Prohibit or permanently remove an individual responsible for a violation of this act from working in his or her present capacity or in any other capacity related to activities regulated by the department.

(3) Order the person to cease and desist any violation of this act and to make restitution for actual damages to any aggrieved person.

(4) Require the person to pay costs associated with any department enforcement action initiated under the provisions of this act.

(5) Impose such other conditions by order or otherwise as the department deems appropriate.

Section 507. Effect on Other Acts.--The remedies and penalties provided in this act shall be supplementary to and shall not repeal or otherwise effect the remedies and penalties provided in any other act.

ARTICLE VI
General Provisions

Section 601. Regulations.--The Secretary of Banking shall prescribe regulations to carry out the purposes of this act. These regulation may contain such classifications, differentiations, or other provisions, and may for such adjustments for any class of transactions, as in the judgment of the department are necessary or proper to effectuate the purposes of this act, to prevent circumvention or evasion thereof, to facilitate compliance therewith, to insure meaningful disclosure to the user of residential mortgage credit, and to insure their being supplemental to and not inconsistent with regulations under the Federal Consumer Credit Protection Act.

Section 602. Construction; Title of Purchaser.--No provision of this act shall be construed to adversely affect the title of a bona fide purchaser of real estate who purchases such real estate in good faith without notice of any deficiency in the procedures provided herein.

Section 603. Repeals.--The act of May 28, 1858 (P.L.622, No.557), entitled "An act Regulating the Rate of Interest," is hereby repealed.

Section 604. Effect on Inconsistent Acts.--If any maximum lawful rate of interest provided for in this act is inconsistent with the provision of any other act establishing, permitting or removing a maximum interest rate, or prohibiting the use of usury as a defense, then

the provision of such other act shall prevail. This shall include but not be limited to the provisions of the act of April 8, 1937 (P.L.262, No.66). Banks and bank and trust companies, subject to the act of November 30, 1965 (P.L.847, No.356), may charge a maximum rate of interest not in excess of the maximum lawful interest rate Permitted to be charged by a national bank located in Pennsylvania under 12 U.S.C.§85.

Section 605. Effective Date.--This act shall take effect immediately except that section 401, 403 and 404 shall take effect in sixty days. Notwithstanding any other provision of this act, the Secretary of Banking, immediately upon final enactment of this act, shall determine the maximum lawful rate of interest for residential mortgage as provided in section 301 of this act, for the month in which this act becomes effective and for the next succeeding month. Such rates shall be immediately published in the Pennsylvania Bulletin and shall become effective upon such publication for the respective months. Thereafter the secretary shall determine and publish the maximum lawful rate of interest for residential mortgage in conformity with the other provisions of this act.

IN THE COURT OF COMON PLEAS OF
LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION

OLD ORDER AMISH HELPING
PROGRAM,

Plaintiff, NO. CI-05-07927

vs.

DANIEL E. STOLTZFUS and
SAVILLA E. STOLTZFUS,

Defendants,

vs.

AMISH AID SOCIETY,

Additional Defendant.

ORDER

AND NOW this 13 day of November 2006, upon consideration of the Settlement Agreement and Mutual Release jointly submitted by Plaintiff, Old Order Amish Helping Program, and Defendants, Daniel E. Stoltzfus and Savilla E. Stoltzfus, it is hereby ORDERED and DECREED as follows:

1. The Settlement Agreement is hereby accepted and the trial scheduled for November 16, 2006 is continued until further order of this Court.

2. Unless Defendants have paid the Bond and legal fees and costs in full (as set forth in the

Settlement Agreement) by January 5, 2007, then upon affidavit of nonpayment and praecipe filed by Plaintiff, JUDGMENT shall be entered for Plaintiff Old Order Amish Helping Program and against Defendants Daniel E. Stoltzfus and Savilla E. Stoltzfus for $295,925.21, or so much of such amount as remains unpaid based upon the affidavit filed by Plaintiff.

BY THE COURY:

"s/"
Michael J. Perezous, Judge

ATTEST:

Copies to: Samuel A. Goodley, Jr., Esquire
Julie D. Silver, Esquire

SETTLEMENT AGREEMENT AND MUTUAI RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made as of the date set forth below, by and between Old Order Amish Helping Program ("OOAHP") and Daniel E. Stoltzfus and Savilla E. Stoltzfus, husband and wife (collectively "Stoltzfus").

WHEREAS, OOAHP made a loan to Stoltzfus for $300,000.00 on October 9, 2001

WHEREAS, in connection with the loan, Stoltzfus executed a Note ("Note) in favor of OOAHP October 9, 2001.

WHEREAS, the Note is secured by a Mortgage recorded at the Lancaster County Office of the Recorder of Deeds on October 11, 2001, Document Number 5014896 ("Mortgage").

WHEREAS,OOAHP instituted a mortgage foreclosure action against Stoltzfus by filing a Complaint in the Lancaster Court of Common Pleas on September 13, 2005, in connection with the property located at 834 Pumping Station Road, Kirkwood, Pennsylvania 17536, captioned as Old Order Amish Program v. Daniel E. Stoltzfus and Savilla E. Stoltzfus, Docket No. CI-05-07927 (the "Action").

WHEREAS, on December 19, 2005, Stoltzfus filed an Answer, New Matter, and Counterclaim to Plaintiff's Complaint.

WHEREAS, through the execution of this Settlement Agreement, it is the intention of the parties to settle, resolve and dispose, fully and completely, any and all actual or implied claims, demands and causes of action which the parties have

or may have against each other, arising out of their relationship giving rise to the dispute above, including but not limited to, any and all actual or implied claims, demands and causes of action which may be asserted or could be asserted in the future as well as all other claims or causes of action of any nature whatsoever

which the parties have or may have against each other arising out of the relationship giving rise to the dispute.

NOW THEREFORE, intending to be legally bound the parties hereby agree as follows:

1. **Note Balance.** The parties agree that as of October 31, 2006, the Note has a balance of Two Hundred Eighty Seven Thousand Six Hundred Ninety Two Dollars and Fifteen Cents ($287,692.15), which includes unpaid principal and accrued but unpaid interest. Thereafter, beginning on November 1, 2006, the Note balance will increase by the *per diem* amount of $43.36 until the Note is paid in full.

2. **Payoff of the Note and Satisfaction of the Mortgage.** The parties agree that Stoltzfus shall have until January 5, 2007 to pay the balance then due on the Note to OOAHP, which upon clearance of funds shall be marked as paid in full.

3. **Attorneys Fees, Costs.** In addition to payment of the balance due on the Note, Stoltzfus shall have until January 5, 2007 to the sum of Five Thousand Dollars ($5,000.00) to OOAHP, for a portion of the attorneys fees OOAHP has incurred in the instant action ("Fees") and to pay the sum of Three Hundred Seventy-One Dollars, Thirty Cents ($371.30), for OOAHP's costs of suit ("Costs").

4. **Judgment.** The parties agree that if Stoltzfus

fails to pay off the Note and Fees and Costs in full on or before 5p.m. on January 5, 2007, OOAHP shall be entitled to enter Judgment, by Praecipe and Affidavit of Nonpayment, against Stoltzfus for the total amount then due and owing on the Note and/or the Fees and Costs, as applicable. The form of Judgment to be submitted to the Honorable Michael J. Perezous is attached hereto as Exhibit "A". Upon execution on the Judgment, OOAHP shall be entitled to recover costs of execution,

attorneys Fees incurred in connection with the execution and interest accruing from the date of entry of the Judgment until the of Sheriff's distribution to OOAHP at the then prevailing interest rate charged by OOAHP to its borrowers.

5. **Discontinuance of Action.** Concurrent with Stoltzfus' payoff of the Note and Fees, the parties shall execute and file a Praecipe to Settle, Discontinue and the Action With Prejudice.

6. **Release of Claims.** Upon Stoltzfus' complete payoff of the Note and Fees as set forth in this Settlement Agreement, each party shall de deemed to release, remise, quit and forever discharge the other party, their spouses, parents, attorneys, subsidiaries, affiliates, heirs, agents, executors, assigns and successors in interest from all manner of actions causes or action, suits, debts, dues, accounts, bonds, controversies, sums of money, conveyances, reckonings, torts, promises, agreements, judgments, claims, demands, and liabilities of any kind or nature whatsoever in law or in equity relating to the relationship giving rise to the lawsuit referred to

above, or as a result of any action or actions taken by any of the parties during the pendency of the Action. Provided, however, that both parties retain the right to enforce the terms of this Settlement Agreement.

7. **Successors and Assigns.** This Settlement Agreement shall be binding upon and inure to the benefit of both parties, their heirs, agents, executors, assigns and successors in interest.

8. **Governing Law.** The terms of this Settlement Agreement shall be governed by and shall be construed in accordance with, the laws of the Commonwealth of Pennsylvania.

9. **Entire Agreement.** This Settlement Agreement constitutes the full and entire understanding and agreement among the parties with regard to the subject matter hereof and fully

supersedes any prior discussions, negotiations and representations of any kind. Any terms of this settlement Agreement may be waived only upon the written consent of both parties.

10. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts each of which shall be an original but all of which together shall constitute one instrument. Execution and delivery of this Settlement Agreement by exchange of facsimile copies bearing the facsimile signature of a party hereto shall constitute and binding execution and delivery of this Settlement Agreement by such party.

11. **Warrant of Authority.** The parties each represent and warrant that of the persons signing the Settlement Agreement by themselves, as well as

on behalf of each party, is duly authorized to

enter this Settlement Agreement and the authority to bind such party.

12. **Consultation of Attorneys.** The parties have each reviewed this Settlement Agreement with their respective attorneys, fully understand all terms and conditions of the Settlement Agreement, and shall be bound thereby. The parties have executed this Settlement Agreement willfully, without duress, and of their own accord.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date and year written below.

OLD ORDER AMISH HELPING PROGRAM

Date: 11-8-06 By "s/" _____
LEVI A. ESH.

Date: 11-8-06 By "s/" _____
SAMUEL A. GOODLEY, JR., ESQUIRE
Attorney for Old Order Amish Helping Program

Date: 11-8-06 By "s/" _____
DANIEL E. STOLTZFUS

Dated: 11-8-06 By "s/" _____
SAVILLA E. STOLTZFUS

Dated: 11-8-06 By "s/" _____
JULIE D. SILVER, ESQUIRE
Attorney for Daniel E. Stoltzfus and Savilla E. Stoltzfus

5/15/2010Prepared By: Pennsylvania Land Exchange
Corporation
Return to: Pennsylvania Land Exchange Corporation
363 West Roseville Road
Lancaster, PA 17601
Parcel ID: 100-73535-0-0000

5683858
02-12-2008 04:26PM

DO NOT PUBLISH

This Deed, made the 12 day of February, in the year Two Thousand Eight (2008);

Between John R. Glick, of the County of Lancaster and Commonwealth of Pennsylvania, hereinafter referred to as the "Grantor"

A
N
D

PSR Kirkwood, LLC, a Pennsylvania limited liability company, **Little Elk Creek Farm, LLC,** a Pennsylvania limited liability company, and **PSR Lancaster, LLC,** a Pennsylvania limited liability company, *hereinafter referred to as the "Grantees".*

Witnesseth, *That in consideration of One Dollar ($1.00), in hand paid, the receipt whereof is hereby acknowledged, the said Grantor hereby grants and conveys to the said Grantees, their successors and assigns, as Tenants in Common:*

ALL THAT CERTAIN lot or tract of land being situate on the west side of Pumping Station Road (Pennsylvania State Route No. SR-2015), in the Township of Colerain, County of Lancaster and Commonwealth of Pennsylvania, said tract being comprised of lot No. 3, Block "A", Lot No. 3A, Block "A" and Lot No. 3B, Block "A" as shown on a final Subdivision Plan of Lots prepared for A. Dale Herr, by Strausser Surveying and Engineering, Inc., dated July 30, 1997 and last revised September 22, 1997, said plan being know as Drawing No. 96063007, said plan being recorded in the Recorder of Deeds Office in Lancaster, Pennsylvania, in Subdivision Plan Book No J 198 at Page No. 41, said lot being more fully bounded and described as follows:

BEGINNING at a p.k. spike near the West edge of the macadam paving of Pumping Station Road (Pennsylvania State Route No. SR-2015), a corner of lands now or late of Norman B. and Katie K. King, said p.k. spike being located at a distance of 1,600 feet, more or less, north of a point located in the intersection of Pumping Station Road (Pennsylvania State Route No. SR-2015) and Kirkwood Pike; thence along said lands now or late of Norman B. and Katie K. King and crossing a flood plain line for Kings Run, South 89 degrees 37 minutes and 06 seconds West, a distance of 642.08 feet to an iron pin in Kings Run, a corner of Lot No. 4, Block "A", remaining lands of A. Dale Herr; thence along Lot No. 4, Block "A", remaining lands of A.

Dale Herr, the five (5) following courses and distances: (1) Passing in and along Kings Run, North 36 degrees, 43 minutes and 49seconds East, a distance of 67.46 feet to an pin; (2) continuing in and along Kings Run, North 05 degrees, 39 minutes and 13 seconds East, a distance of 87.70 feet to an iron pin; (3) continuing in and along Kings Run, North 31 degrees, 13 minutes and 57 seconds East, a distance of 386.43 feet to an iron pin; (4) continuing in and along Kings Run, North 58 degrees, 56 minutes and 34 seconds East, a distance of 125.45 feet to an iron pin; (5) re-crossing a flood plain line for Kings Run, South 86 degrees, 03 minutes and 13 seconds East, a distance of 25.20 feet to an iron pin, a corner of Lot No. 1A, Block "A"; thence alone Lot No. 1A Block "A" and along Lot No. 1, Block "A", respectively, South 00 degrees, 00 minutes and 43 seconds East, a distance of 211.81 feet to an iron pin, a corner of Lot No. 2A, Block "A"; thence along Lot No.2A, Block "A", the three (3) following courses and distances: (1) South 00 degrees, 00minutes and 42 seconds East, a distance of 150.36 feet to an iron pin; (2) South 40 degrees, 29 minutes and 11 seconds East, a distance of 71.42 feet to an iron pin; (3) passing along the South line of a proposed access easement, South 86 degrees, 03 minutes and 13 seconds East, a distance of 221.00 feet to p.k. spike in Pumping Station Road (Pennsylvania State Route No. SR-2015); thence in and along Pumping Station Road (Pennsylvania State Route No. SR-2015), South 03 degrees, 56 minutes and 47 seconds West, a distance of 99.00 feet to the point and Place of

BEGINNING.
BEING known as 834 Pumping Station Road, Kirkwood, PA 17536.

BEING THE SAME PREMISES which Terry A. Bergman, Sheriff of the County of Lancaster, Pennsylvania, by deed dated February 11, 2008, and recorded in the Recorder of Deeds Office in and for Lancaster County, Pennsylvania, at Instrument #5683430, granted and conveyed to John R. Glick.

AND THE GRANTOR HEREIN is the agent of the Grantees herein by virtue of certain agreements dated November 15, 2007, and November 15, 2007.

***And** the said Grantor does hereby Specially warrant the property hereby conveyed.*

***In Witness Whereof,** said Grantor has hereunto set hand and seal the day and year first above written.*

Signed, Sealed and Delivered
In the Presence of

"sl"
Samuel A. Goodley

"sl"
John R. Glick

***I hereby certify** that the precise address of the Grantees herein is 363 West Roseville Road, Lancaster, PA 17601.*

"sl"
Jennifer E. Rineer

Note
Secured by Real Estate Mortgage

BE IT KNOWN that the undersigned Daniel E. Stoltzfus and Savilla E. Stoltzfus, husband and wife, of County of Lancaster and Commonwealth of Pennsylvania (hereinafter called the "Obligor/s")

Stand firmly bound unto **Old Order Amish Helping Program**, a Pennsylvania Non-Profit Corporation, with its office and principal place of business located at 285 Smith Road, Millersburg, Pennsylvania 17061, (hereinafter, whether one or more, called the "Obligee").

In the just sum of **Three Hundred Thousand and No/100 Dollars ($3000,000.000)** lawful money of the United States of America, to be paid to the Obligee: to which Payment the Obligor/s hereby bind themselves firmly by these presents this 9th day of **October, 2001.**

THE CONDITIONS OF THIS OBLIGATION are as follows:

1. If the Obligor/s shall, without fraud or delay,-

(a) Cause to be paid to the Obligee the JUST SUM of Three Hundred Thousand and No/100 Dollars ($300,000.00), lawful money as afore said, with interest at the rate of six(6.0%) percent per annum. The

interest and principal shall be paid in monthly installments of $2,100.00. The first 9th day each mouth for ten (10) years. After ten (10) years (I.e., on October 9, 2011), the Balance of interest and principal shall be due and payable without further delay. Each payment shall be of interest and principal shall be due and payable without further delay. Each payment shall be first applied to interest, and the balance to the reduction of principal. There shall be no penalty for early payment of principal. If this note is not paid, the principal may be demanded in full or the interest rate changed on February 1, 2002, and semi-annually thereafter on first day of each August and February until the principal and interest are paid in full.

and shall also--

(b) Maintain Amish Aid coverage on all property now or hereafter covered by concurrently-dated mortgage, securing this note, on premises in the Township of Colerain, County of Lancaster, Pennsylvania, (hereinafter called the "mortgaged premises") in such form and amount/s (not less than the aforementioned just sum), as shall be satisfactory to the Obligee and reasonably necessary to secure payment, in case of fire, of all money obligations hereunder; and

(c) Pay all taxes and lienable chares

and assessments now or hereafter lawfully imposed on the mortgaged premises by any public authority before they became delinquent, and produce to the Obligee, by December 1 of each year, receipts therefore and for premiums for the above-mentioned fire insurance for the current year; and

(d) Reimburse the Obligee for any expenditures which the Obligee may make for insurance, taxes and lienable charges or assessments on the mortgaged premises because of any non-compliance fire insurance by the Obligor/s with the requirements of subparagraphs (b) or (c) above; and

(e) Keep the mortgaged premises in such good order, condition and repair as the Obligee may require; make on alterations thereto without the written consent of the Obligee, and refrain from committing or permitting the commission of waste on said premises then the above obligation shall be void; but otherwise it shall remain in full force.

2. The obligor/s hereby empower/s any attorney of any court (whosesoever located) to appear for and CONFESS JUDGMENT against the Obligor/s, in favor of the Obligee (or the Obligee's assigns), for the aforementioned penal sum, with costs of suit, release of errors, and without filing any declaration or complaint.

3. Upon any DEFAULT continuing for more than thirty days in payment of the aforementioned just sum, or any installment thereof, or interest thereon, at the time/s herein specified, or upon default in performance of the Obligee, become due; and payment of the same, together with interest, all items paid by the Obligee under Paragraph 1(d), an attorney's commission of 5% on the total of foregoing, and costs of suit, may be enforced and recovered at once by any appropriate remedy or concurrent or successive remedies (by whatever name designated) on this Note or on any judgment entered thereon, and/or on the mortgage accompanying this Note, without stay of execution ,and with full release of errors, notwithstanding any law or usage, or anything herein contained , to the contrary; and the Obligor/s hereby waive/s the benefit of all laws now or hereafter in force exemption real or personal proper from levy and sale on execution.

4. The Obligor/s agree/s that all conditions and provisions of this Note shall enure to the benefit of, and jointly and severally bind, not the respective parties hereto, but also their HEIRS, legal representatives, successors and ASSIGNS, as fully as thought the latter were specifically mentioned in each instance.

Witness: IN WITNESS WHEREOF, the Obligor/s, intending to be legally bound, has/have executed this Note on the date above written.

Witness:
"s/" _____

"s/" _____ Seal
Daniel E. Stoltzfus

"s/" _____ Seal
Savilla E. Stoltzfus